AFTER REPEAL

A STUDY OF LIQUOR CONTROL ADMINISTRATION

BY

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AND

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WITH A FOREWORD BY

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FOREWORD

by

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GOOD government is compounded of efficient management and intelligent policy. The proportion of good management required becomes larger and larger for each generation with the increasing complexity of civilized life. Even age-old problems, like the control of liquor, take on new difficulty with the social, economic, and mechanical changes which have come in the last twenty-five years. The weakening of family, church, and community discipline; new machinery, chemistry, and the automobile; more cash wages and dependency; and the speed-up of monotony, have combined to make of the liquor problem a new task in every modern nation. The questions of policy are no more difficult than before, but the increasingly difficult questions of administration—these are at the center of the modern problem of alcohol.

Nature of This Study

This volume, *After Repeal,* by Leonard V. Harrison and Elizabeth Laine, is a totally new approach to the present-day liquor problem in the United States. It is based upon more than two years of firsthand study which has carried the authors and their assistants to every corner of this country in the search for facts. Without attempting to determine for others the questions of social policy, which are after all primarily matters of opinion, and hardly sub-

ject to analysis on the basis of a two-year trial, the authors present an unprejudiced, factual, but human picture of America's post-repeal "noble experiment" in liquor control. The study is approached primarily from the standpoint of administration, because the key to success or failure is apparently in administration.

This report and the intimate contact with alcohol-beverage commissions and other agencies, federal, state, and local, which were essential in its preparation, were made possible by the Liquor Study Committee,[1] which published its well-known report, *Toward Liquor Control,* in 1933. Miss Laine and Mr. Harrison were two of the chief staff assistants in that inquiry as well.

The Institute of Public Administration has participated in the completion of this study and presents the report not because the Institute has any interest in the liquor problem as such, but because the administration of liquor control in its many forms in the various states is particularly rich in lessons for the administrator in whatever field he may be at work.

Problems of public administration center about the work of planning, organizing, dividing, and delegating work; of staffing, budgeting, and reporting; of providing general direction and coordination; and of handling public relations. These problems arise in any enterprise, be it public or private, in which many men work together for some purpose. While the relative importance of these elements may vary from activity to activity, and from time to time, they are never absent, and may therefore be regarded as essential phases of administration. From this it follows that any task or enterprise may be examined and observed in the effort to learn not only how that particular task is being performed and how it may be better done, but also what it teaches about planning, organizing, dividing, delegating, staffing, directing, and coordinating in general. This is one of the services performed by this report.

[1] Raymond B. Fosdick and Albert L. Scott. See *Toward Liquor Control,* Harper & Brothers, 1933.

The public at large will thus find in this volume an honest, informed, common-sense description and appraisal of the purposes and methods, and of the successes and failures of present-day liquor control. The liquor trade will find in it many suggestions they would do well to heed unless they are looking forward to a new era of outrage and prohibition. Liquor-control administrators will find an unprejudiced, comparative statement of their work and of the variety of administrative experiments of which they themselves are a part. They will find many practical suggestions for the improvement of their management, drawn from the experience of others. In these pages, drys, moderates, and wets will find not only what is being done, but what can and *what cannot be done* under American conditions. Governors, legislators, and those interested in liquor-control policies will find analyzed for them the plans, devices, and systems of each of the states. Editors will find in this a reference book on repeal and its aftermath, and students of public administration will discover between the lines an expert analysis of the problems of administration as they arise in liquor control.

It is these questions of management which are of primary interest to the Institute of Public Administration. It may therefore be not amiss to indicate briefly in what way an examination of liquor-control administration contributes to the broader study of public administration. In the following paragraphs are outlined a number of the major questions of public management illuminated by this study.

Policy Planning

First is the technique of determining policy. Whenever government sets about to do something, we are confronted by the question of what is to be done, and how this is to be accomplished. In the case of liquor control in the United States, the repeal of the Eighteenth Amendment brought this country face to face with the necessity of suddenly and completely reconsidering policy and reconstructing administrative machinery. The record of this transition is a

chronicle of importance not only for the present, but also for the future. This is not the less so because it has been overshadowed and therefore virtually neglected while both the government and the people have been so completely absorbed in the economic and international phases of current life.

But the work has gone on none the less. The important questions of policy were settled state by state along three general lines: 7 states continued with prohibition, though of these 5 declared that beer was not an intoxicant; 12 states decided that people should be permitted to have liquor for consumption, but only in their homes; and 29 states, and the District of Columbia, determined to permit the sale of alcoholic beverages by the glass, thus opening the way in some areas for the return of the saloon. While these are the outstanding questions of public policy involved, there are many others. This is evident from the fact that there are three main categories of alcoholic beverage, the malt products, the wines, and distilled liquor, and not less than a dozen degrees of control that may be imposed variously to each of these categories. Controls may be applied in connection with production, rectification, wholesale distribution, retail sale, or consumption, or through a combination of these. While the major policy to be followed in each case is a matter of public policy, public interest is more concerned with retail sale than with any other phase of liquor control. But here again there are many possibilities. Among these we have:

1. Prohibition
2. No sale, but permission to import
3. Package sale only
4. Package sale under a rationing system (not used in the United States)
5. Sale by the drink, but only with food
6. Sale by the drink

And even within these categories, there may be a host of

varying restrictions, particularly with reference to hours or methods of sale and the nature of the premises where liquor is sold.

The price of liquor is another major instrument of consumption control and a factor of importance in enforcement, therefore the plan of the state with regard to the amount of revenue which it extracts from liquor consumption must also be listed as a matter of public policy.

These policies are the answers to the questions: *What* kind of alcoholic beverages shall be permitted? Under *what* conditions? And ultimately, *what* is our purpose? Another category of questions arises in answer to the question, *how* shall we go about it? These latter are the questions of administrative policy. While questions of administrative policy are in large measure dependent upon the prior settlement of general questions of public policy, they are nonetheless of great importance. Often, in government, *what* is to be done has to be profoundly altered in the light of *how* it is to be done. So it is with liquor control. The major questions of public policy and the questions of administrative policy are intimately intertwined. "The saloon shall not return!" is an excellent illustration of this fact. As a policy, this statement was widely endorsed, by the President, by governors, by the press, and by most articulate groups. It was undoubtedly the mandate of the people in most areas. But how? Through what administrative devices? Here was the rub. And it was the unwillingness of legislators, administrators, enforcement agencies, and also of a large part of the public especially in the cities, to accept the administrative controls and restrictions that are known to be necessary to banish the saloon, which has brought it back in some states. In other words, the desired policy was abandoned because the necessary administrative controls were too difficult. It should be said, of course, that administrative difficulties have had nothing to do with the return of the saloon in certain states. They knew what they wanted,

and have it. But in other cases the saloon's return is the result not of positive desire but of unwillingness to prevent.

Law and Regulation

In the initial process of defining any governmental task, it is necessary to decide to what extent the legislature shall determine policy by law and to what extent it shall be left to the executive to determine through rules and regulations, or through the normal process of daily decisions. Though the courts have made a bad tangle of this problem, particularly in recent months when driven on by fundamental opposition to the major objectives of new legislation, the underlying theory of sound practice is clear and cogent. This may be expressed as follows:

1. Broad questions of *public policy* must be determined by the legislature in order that this may be a government of laws and not of men, resting upon the consent of the governed.

2. Subordinate questions of *administrative policy* should be left normally to the executive, because they are by nature executive and not legislative in that they cannot be dealt with in advance through debate, but must be handled elastically day by day in the changing work of government; because they are frequently technical and scientific in character; and because their efficacy is not so much a matter of opinion as of ascertainable fact.

It does not follow, however, that all questions of administrative policy should be excluded entirely from legislation and left completely to the administrators. Certain broad questions of management are matters of opinion, require the consent of the governed, and are so intertwined with questions of public policy, as has been noted, that they cannot be regarded as inappropriate matters for legislative determination. In liquor control, the questions of local option, or the use of a state sales monopoly are certainly questions of this character.

Though these principles of law and administration are

perfectly clear, it is not an easy matter to apply them intelligently or "constitutionally" in every instance. This is particularly true in connection with totally new undertakings. In the old established functions there is little question. A whole school system can be operated under the legal authorization "there shall be in each city a board of education with power to conduct the schools and lay and collect taxes therefor." Confronted with this, the courts will not lift an eyebrow; nor are impossible tasks of policy determination placed thereby upon administrative officials. But with new activities it is different. Due to the lack of tradition which is inherent in novelty, the courts are likely to feel that certain questions of public policy have been left to the executive when they should have been determined by the legislature, at times failing to recognize the difference between questions of public policy and of administrative policy. This presents a serious dilemma because it is precisely in connection with new activities that it is impossible for the legislature to act intelligently, there being no past experience to go by in defining how something is to be done, and because new activities are by definition more or less experimental and require extensive adjustment from day to day in the process of government.

Liquor control is no exception. Though a new task in 1933, it was an old problem, and has therefore not been complicated greatly by the scruples of the courts regarding "improper delegation of legislative powers." A study of the laws and of the record of administration contained in this volume show how differently various states have dealt with the question of what to place in the statute and what to leave to administrative regulation. Many of the laws contain important provisions regarding administrative policy which might better have been left to management, while others have left basic questions of public policy entirely in the hands of the administrators. On the whole, the delegation of authority is very broad, the powers of executives over persons and property extraordinarily sweeping. This

is an important fact for students of administration, the results of which will be watched with deep interest. The question may well be asked, is there any evidence to indicate that broad delegation, particularly of administrative policy, is a help or a hindrance, a benefit or a danger in liquor control?

Centralization and Decentralization

With few exceptions all governmental work involves the performance of a service, the exercise of control, or the execution of a task, not at the center of government, but at thousands of points scattered more or less evenly throughout the country or wherever the citizens or their interests may be. The real work of government is not to be found behind the Greek columns of public buildings. It is rather on the land, among the people. It is the postman delivering mail, the policeman walking his beat, the teacher hearing Johnny read, the whitewing sweeping the street, the inspectors—dairy, food, health, tenement, factory—on the farm, in the laboratory, the slaughterhouse, the slum, the mill; it is the playground full of children; the library with its readers; the reservoirs of pure water flowing to the cities; it is street lights at night; it is thousands and thousands of miles of pavements and sidewalks; it is the nurse beside the free bed, the doctor administering serum, and the food, raiment, and shelter given those who have nothing; it is the standard of weight and measure and value in every hamlet. All this *is* government, and not what men call "government" in great buildings at capitols; and its symbol is found not in the great flag flown from the dome of the capitol but in the twenty-five million flags in the homes of the people.

Of the million people who work for the United States government, only 115,000 are in Washington; of the 138,000 who work for New York City, only 25 are in the City Hall. The rest? They are scattered, doing the work of government throughout the land in offices, big and little, and working in small groups or by themselves.

In thus fitting government to the land and to the people,

the bulk of the work must be localized. This can be done either by sending into the localities officials who are controlled by the central government, or by setting up locally selected and controlled officials to whom independent powers of decision and execution are given, or the two plans may be combined. In either case, separate consideration must be given to the plan of localization which is to be applied (1) to the making of policy and (2) to the execution of policy, *i.e.*, to the legislative function, and to the executive and judicial functions.

In liquor control, this geographic subdivision of the work of government presents a remarkable series of experiments in public administration. In thirty-two states the determination of policy regarding retail sale is decentralized through the device known as local option, which, in spite of the tenuous rationalizations of the courts, must be regarded by students of administration as a geographical subdivision and delegation of legislative power. The bulk of the work of enforcement in like manner really falls to local police officers and local courts, though some sort of state enforcement is generally set up as well. Even where there is no local option to determine policy, the plan of decentralized enforcement operates to give something like it, particularly by providing a means to mitigate the force of the state law. This is known as the policy of the "open" as distinguished from the "closed" town, and is determined directly by the local administrative officers and the local courts, generally in conformity with local public opinion but without benefit of power legally to determine policy, which would be a purely legislative act.

In view of the experience of this nation with national prohibition and the record of state liquor control contained in this volume, we may well ask ourselves whether any centrally determined policy can be successfully enforced except by centrally controlled officials. In other words, may it be stated as a principle of public administration that, if the geographical subdivision for enforcement provides

smaller and more numerous autonomous areas than the subdivision for policy determination, the actual administration may not follow the centrally determined policy except as it is modified by each enforcement unit? This generalization seems to be true of liquor control. If true in other fields, it is a factor of great importance for all administration and may not be disregarded with impunity particularly in the inauguration of new public activities.

The Place of Liquor Control in the Government

Where does liquor control belong in the governmental setup? Should all of the various activities involved be placed in a special department responsible only to the chief executive and to the legislature? Should the work go to a single bureau of some established department? Or should the work be split up, part of it going here and part of it going there, as for example, licensing to a board, revenue collecting to the tax department, enforcement to the attorney general, inspection of manufacture to the health department, and temperance training to the department of education? And if concentrated, how should the work be headed, by a board or by a single administrator?

These problems are not unique to liquor control, but arise in every field of government administration. It may almost be said that they go to the heart of the problem of organization.

It has been observed that governments do not function well where there are many loosely related departments, boards, authorities and commissions. Some cities have almost a hundred such independent agencies, and some states twice as many—a condition which would bankrupt any private business. Obviously no chief executive, be he mayor or governor, can exercise any supervision, coordination, or control over such an array.

In the effort to find a rational formula for reducing the number of departments, by combining activities, various stu-

dents of administration have suggested that larger departments may be formed:

1. According to functions, such as water supply, education, or health; or

2. According to the professions or skills of the staffs employed, such as engineers, lawyers, teachers, doctors, accountants, statisticians, or stenographers; or

3. According to the persons or things dealt with, such as children, the sick, the poor, the unemployed, the jails, the hospitals, or the streets.

It may well be doubted whether any one of these principles of departmentalization can be rigidly adhered to in any government. It has certainly not been attempted. What we usually have, where some rationalization has been attempted, is a judicious combination of all three, with a tendency toward a greater dependence upon functional organization in so far as the external and service functions of the government are concerned and a greater dependence upon professions and skills in so far as the internal and institutional activities are concerned.

Another highly important factor in departmentalization is found in the newness of the activity. New activities are generally set up on the basis of the persons or things dealt with. There is much to be said in favor of this practice, because a new activity requires more enthusiasm, more "go," more coordination within itself, more experimentation, more freedom while growing, than can be found in or accorded to an old activity. As a practical matter it would probably be impossible to get a really new line of work going if its various component parts were scattered among various old departments, particularly if the new activity had been initiated, as is so often the case, outside those departments.

All of these questions have been raised anew as the states have again undertaken the task of liquor regulation. They have arisen in the federal government which still has important functions in alcohol control. The nature of the plans

adopted and the experience thereunder are thus of significance in connection with the entire question of the overhead structure of government and the interrelation of its component parts.

Personnel and Administration

There is no phase of public administration today which has attracted more attention than personnel administration. The American people are at last coming to realize that the spoils system is perhaps the weakest link in our democracy not alone because it wrecks the service, but also because it warps the democratic process itself. Can government be trusted with new responsibilities? To be specific, can government be expected to supervise or itself manage the liquor business satisfactorily? Certainly not, unless government can command sufficiently capable and honest personnel to do the work. This is no new discovery, but its restatement in specific terms in this study constitutes a new chapter in the growing movement for better government personnel.

Public Authorities and Corporations

In recent years there has arisen a new interest in the nature, operation, and structure of those public businesses which, because of their entrepreneurial features, closely resemble private business. Following the suggestion of *Toward Liquor Control* and the example of the Canadian provinces, fifteen American states have, in one form or another, gone into the liquor business. This has been done in the belief that better control could be established under this plan, that there would be less sales effort, less dishonesty, and more responsibility, more respectability, and also more revenue.

While it is undoubtedly too early to make any full appraisal of the experience of these states, it is not too early to bring together certain elements of the story, in order to see what light they throw on the probable fulfillment or disappointment of these expectations. Another factor of

great interest is brought to light by comparing the plans of organization and operation of the various state liquor monopolies. This volume is the first effort of this kind, and should contribute not only to the better management of the liquor monopolies themselves, but also to the general understanding of the nature of work which can and which cannot be handled satisfactorily by a public business enterprise and of the conditions under which public businesses may be expected to operate.

Other Administrative Problems

It is hardly necessary to deal in any detail with the many other broad questions of administration arising in liquor control. The selection of staff, the nature of central fiscal controls, interrelations with other governmental agencies, reporting and public relations, the taxability of quasi-private state businesses, and temperance education need only be mentioned here in passing.

In short, it may be said that there are few major problems of public administration which do not emerge in striking fashion in connection with the governmental effort to control the consumption of alcohol. In fact, alcohol is an unusually favorable medium in which to study many of these problems, even as it is a favorite medium for the preservation and study of natural forms in the museum or laboratory. Surely it would be wasteful, while examining in this volume the particular problems of liquor control and the experiences of the past two years in meeting them, to overlook the fact that here we have also a rich and accurate case history in public administration.

Acknowledgments

A study of this sort is inevitably a cooperative undertaking. Acknowledgments are due to many persons. First of all, there is the Liquor Study Committee, which, at the suggestion of John D. Rockefeller, Jr., initiated the inquiry and through whose auspices it was financed; second, the In-

stitute of Public Administration which supervised the study and sponsors the report; third, the members of the staff who collaborated in the work; and finally the many administrators, liquor dealers, law officers, newspaper editors, and other leaders, who contributed.

While the authors have asked that their appreciation to these groups and individuals be recorded, it is only fair to say that the responsibility for the excellence of this report is theirs. It is they who have diligently and skillfully pursued the facts and recorded them with a temperance and candor rare particularly in volumes dealing with the use and control of liquor.

AFTER REPEAL

Chapter One

LIQUOR CONTROL TODAY

This is an inquiry into the experience of the federal, state, and local governments in the control of the liquor traffic since repeal of the Eighteenth Amendment. The regulatory laws and the records of control administrations are open to examination and a critical evaluation of these is herein set forth. But estimation of the broader social consequences of the return of legal liquor cannot yet be made. It is impossible, we are convinced, to draw valid conclusions from the existing fragmentary data relating to the incidence of drunkenness, alcoholism, and other forms of social deterioration resulting from the abuse of liquor. The habits of consumers are changing as the novelty of purchasing legal liquor wears off, as prices decline and incomes rise, and as a reorientation of mass social attitudes in regard to the use of liquor is brought about. No clear indication of established tendencies for the entire population is at present discernible. It seems to be generally agreed that repeal put a stop to the practice of "tanking" on week ends so widely prevalent among business men during prohibition; that drinking among youths has not increased markedly notwithstanding the greater accessibility of liquor; and that drinking among women, begun during prohibition as an accompaniment of a general freedom from prewar taboos, has not undergone any important change.

On the other hand, there is unquestionably a greater consumption of alcoholic beverages, especially by persons of limited means who formerly could not afford to patronize bootleggers or speak-easies. Many people also were deterred from purchasing liquor because of the inconvenience

or from dislike of surreptitious dealings. Though reliable information as to changes in drinking customs is lacking, everyone privately entertains a notion of such matters. Opinions are narrowly based on personal observations which vary from one social group to another and from community to community.

Varied Opinions on Effects of Repeal

The American Institute of Public Opinion has made the most extensive compilation of individual opinions as to whether conditions are better since repeal, or worse, or without significant change. Thirty-six per cent of the persons who replied to the Institute's questionnaire indicated that they had observed an improvement, 33 per cent held that conditions were worse, and 31 per cent thought that they could see no appreciable change. Taken as they stand these figures show an astonishingly even division of opinion; they are quite inconclusive so far as throwing any light on the success or failure of liquor-control measures is concerned. But the simplest possible manipulation of the figures furnishes even more surprising results. Thus, 67 per cent of the responses indicate that conditions are better or no worse than during prohibition, while 64 per cent are recorded as believing that the situation is worse or no better since repeal. Statistics are frequently condemned for their adaptability to the statistician's prejudices, but they rarely admit of a two-thirds majority for seemingly opposite conclusions as they do in this case. The simple truth is that at present public opinion cannot furnish a basis for evaluating the social results of legalized selling of liquor. From the many inquiries which we have made during the course of this study we have come to the conclusion that the opinion of the great majority of commentators on the social or control problem is merely a reflection of their personal attitude toward liquor. They do not make objective appraisals of the success or failure of measures of control. Moreover, the factual material relating to arrests for drunkenness and for

driving an automobile while intoxicated, the effects on health, and the neglect of families through excessive expenditure on drink are incomplete and on the whole unreliable because of non-uniformity.

For example, the number of arrests for drunkenness depends a good deal on police policy; in many places no arrest is made unless disorderly conduct is involved, and decisions regarding what constitutes disorderly conduct vary widely from city to city. Isolated compilations of statistics have been seized upon to prove a particular view or contention about liquor control, and data of equal validity indicating an opposite trend are discarded. So far no one has undertaken to get at the bottom of the reasons for variation in the factual materials, nor has any painstaking effort been made to develop trustworthy statistical yardsticks by which to measure the effects of repeal. It is highly important that this be done so that we may have reliable information on the social effects of liquor tax rates and prices and of the various control regulations and enforcement procedures. The task of laying the foundation for statistical measurements in this field is one for experts and not for those who seek either to prohibit or encourage the use of liquor. Unfortunately, it is the interested advocate who busies himself with gathering and interpreting statistics.

The Lapse in Public Attention

The determination of the American people to tax liquor and impose legal restrictions on its sale as a substitute for ineffectually attempting to outlaw its manufacture and use came with surprising swiftness. The general public, having, with a feeling of immense relief, voted for repeal, were singularly apathetic about the precise control methods which were then to be established. People had become tired of liquor as a topic of conversation, a topic which had claimed so much attention during prohibition, and were content to let the subject drop. This apathy about liquor control has continued until the present time. Except for the

militant drys who plan for the return of prohibition, few persons give any indication of being aware that a special liquor problem exists.

Legislators undertook their task of formulating systems of control under the influence of a few catch phrases about barring the return of the saloon, restricting the private incentive to push the sale of liquor, and preventing a bond of interest between politics and the liquor-selling business. The diverse ways in which these aims were translated into statutory measures of control are detailed in the pages of this volume. There was no single plan suitable for all the states. The best form of regulation for a homogeneous and predominantly rural state such as Vermont was bound to be quite different from that required by a state having a heterogeneous urban population like New Jersey; the problem in New York was quite dissimilar from that found in Virginia.

New Features of Control

Despite public indifference and the lack of time in which to debate proposals for regulating the liquor traffic, there was an evident disposition to experiment with new measures of control. The statute books of preprohibition days were dusted off and consulted, but everywhere significant departures from old forms of regulations were made. The result was that a number of similar new devices are threaded through the various state laws. Chief among these are (1) the generally adopted practice of separating the package sale of liquor from sale for consumption on the premises, (2) the arrangement for the sale of nonintoxicating beer on a different basis from that governing the sale of wines and spirits, (3) the provision that the on-premises sale of the heavier alcoholic beverages be limited to bona fide restaurants and hotels, (4) the requirement that licensed places be open to the view of the public without the screening devices common to the saloons of pre-prohibition days and to the speak-easies which later took their place,

(5) the recognition of the state's responsibility for supervising the sale of liquor as contrasted to the earlier practice of placing the entire responsibility in the hands of municipal and county officials.

Separate Package Sale

In all of these provisions, save that of central state administration, the objective has been to effect separations in the liquor-selling business in a way to minimize the possibilities of public disorder. By breaking up the business in this way the package sale of liquor for home consumption has been conducted under quite satisfactory conditions. The package liquor store has been an orderly establishment and has given no offense to the sensibilities of the public, excepting, of course, those who abhor the sight of liquor and are opposed to its sale at any time or place.

Separate Sale of Beer

The provisions made for the separate sale of beer have been disappointing as a means of promoting good order. There are a number of reasons for the failure of beer taverns to win public approval. Many of these establishments have introduced entertainment features to encourage long visitation, and they have sold heavier beers to cater to those who drink for the alcoholic effect. Experience has shown that the sale of heavy beer in a tavern which is essentially a place of amusement leads to more rowdyism and disorder than the sale of spirits does in a reputable restaurant. Far too little attention has been paid to the need for differentiating between light beer and heavy beer and ale.

Restrictions on On-premises Sales

The widespread practice of restricting the on-premises sale of spirits to restaurants and hotel dining rooms is an important new feature of post-repeal licensing arrangements. However, when a bar over which drinks are served is set up within a dining room, the advantage in limiting

on-sale to meal-serving establishments is largely lost. Too often the restaurant comes to be only a thinly disguised saloon with business at the bar flourishing and the service of meals an incidental enterprise carried on more to accommodate the law than the patrons. It is extremely difficult to maintain safeguards against the preponderant influence of a bar, particularly in restaurants of the meaner type where the meal-serving part of the business is neglected owing to the lack of demand for food. Admittedly a large number of persons desire at times to drink at a bar when they have no desire for a meal. In localities where the demand for over-the-counter service is insistent, bars can scarcely be ruled out by law. Perhaps the best method to discourage the licensed pseudo-restaurant would consist in establishing a much higher license fee for dining rooms where bars are maintained than for those where drinks are served only at tables and where the food service, at least during meal hours, is on the scale of an exclusively restaurant business. This would not automatically solve all of the difficulties, but it would tend to reduce the number of places at which the sale of drinks without food is featured, and it would give a definite advantage to the type of licensed place which is accepted as the more suitable for on-sale of liquor. In a real dining room both the proprietor and the patrons contribute to the maintenance of good order. An exclusively drinking establishment, however, places little or no restraining influence on those who may fall into the habit of loitering, treating, and "soaking" at a bar. In any case, the bar privilege, for which a high fee should be charged, should be granted only to bona fide dining places.

The State Enters Where Local and National Governments Failed

Prior to prohibition the responsibility for liquor licensing was with rare exceptions placed in the hands of local officials. Policies and procedures varied from city to city and were changed in kaleidoscopic fashion as one local adminis-

tration succeeded another. This checkerboard pattern of liquor control brought chaos and confusion; liquor-control administration was a matter of continuous political pulling and hauling. When a strict rule was inaugurated in one quarter, it was imperiled by a wide open regime in a neighboring jurisdiction. On the whole there was a tendency toward a leveling down of all licensing practices, and the defense against this took the extreme form of local prohibition by county, city, and town local option. Uniformity was finally achieved through national prohibition, but the leveling-down process again set in, this time by a steady breakdown in law enforcement. Within two decades we have witnessed the chaos produced by a myriad of liquor policies and the failure of a single policy for the nation. Now we are launched upon a middle course; every commonwealth has set up state-wide standards of control subject to certain local variations in smaller jurisdictions.

Fifteen states have gone so far as to create public monopolies for the sale of liquor under the management of liquor-control commissions; twenty-five states have established central licensing bodies charged with regulating the private liquor trade. It should be observed, however, that this development of state control was perhaps brought about more by a desire to get liquor revenue for the states than by a conscious desire to promote social welfare. Thus in ten of the private license systems, a state fiscal agency acts, ex-officio, as the liquor-control authority. In several of the monopoly and dry states the administration of the beer law is placed in the hands of state fiscal authorities. It is noteworthy that in not a single instance was liquor control placed under the jurisdiction of the state department of public welfare. This subordination of the social implications of liquor control to the revenue aspect was caused in part by the immediacy of the tax and fee-collecting task, and in part by the lack of clearly conceived objectives in the field of social welfare. However accidental may have been the provision of state-wide control over liquor, from the ad-

ministrative standpoint the result has proved beneficial. There is now at least an adequate foundation for working out state policies along uniform lines as experience points the way to needed changes.

The division of responsibility for liquor regulation between the state and local governments varies according to the strength of home-rule sentiment within the several states. In some states municipal officials exercise the right of granting and revoking all local licenses, in others they serve in an advisory capacity to the central state licensing authority. The participation of local agencies in liquor administration and the sharing of revenues between the state and local unit insures a degree of cooperation which is highly beneficial.

The benefits are most apparent when the local governments assume a positive role in tightening restrictions on liquor selling to conform with prevailing attitudes among the people within their jurisdictions. These restrictions have to do with limitation of the number of licensed premises, restriction of hours of sale, zoning restrictions, and regulations governing sale of liquor in dance halls and other places of amusement. In many places local officials are also required to pass upon the fitness of licensees on the ground that they possess a more intimate knowledge of the reliability and character of applicants. At present we are in the experimental stage in apportioning responsibility between the state and local agencies. A principle suggested by recent experience is that it is wise to erect double barriers against misuse of the license privilege. If a certain locality desires to impose more rigid restrictions than apply in other jurisdictions, it should be permitted to do so on the condition that it will assume responsibility for seeing that the restrictions are sufficiently well supported by local sentiment to make them enforceable. If, on the other hand, the standard requirements of the central state agency are fixed at a higher level than a negligent local administration would maintain, the state standard becomes a safeguard. In any

event, a departure from state-wide policy by a local body should always be made in the direction of more rigorous control and never by way of a sloughing off. There will be conflicts between state and local officials, and there will be instances of carelessness and ineptitude, but the principle of joint endeavor to elevate standards gives an opportunity to those who have the will to take advantage of it.

Administrative Discretion an Essential Factor

The key to successful liquor control is the investiture of adequate discretionary powers in the regulatory body. The exercise of wide discretion can be wisely entrusted only to an administrative personnel of the highest quality. If mediocre administrators are brought to the exacting task of liquor control, they will of course fall down, regardless of whether or not they are given an ample range of discretion; but even able administrators will fail to achieve significant results without it. Sometimes administrative discretion is awarded under the law only to be whittled down by judicial intervention; sometimes discretionary powers are destroyed by purely political interference. If liquor-control administration is to work positively toward a progressive elevation of standards, and not negatively, merely guarding against infractions of the laws and regulations, full discretion to grant and revoke licenses and to promulgate rules must not only be given in the first place but must also be preserved against attrition of any kind. If discretion is abused by capricious, vindictive, or venal administrators, the remedy lies in replacing them with trustworthy and competent public servants, and not in withdrawing powers essential to effective handling of liquor control.

State Liquor Monopolies

The entry of fifteen state governments into the liquor-selling business constitutes the most noteworthy and far-reaching attempt to place restraint on the newly legalized liquor traffic. In these states liquor monopolies have been

created after the pattern of the Canadian provincial liquor commissions and they bear some resemblance to the Scandinavian state-control plans. In the face of opposition by private liquor interests, all of the state store systems have survived thus far without encountering a major threat of dissolution.

In nearly half of these states, however, private dealers are licensed to sell all kinds of alcoholic beverages by the drink, and in more than half, the private sale of all wines and beers is permitted for on-premises consumption. Indeed, the licensing aspect of monopoly-control administration presents virtually the same problems that are found in what are known as the private-license states.

As we have examined the workings of state monopolies over the past two years we have gathered the impression that only a few of them are measuring up to expectations in serving the particular needs of their states. At the time of our field examinations the most successful monopoly-control systems were found in New Hampshire, Vermont, Virginia, and Washington. The others may be appraised as mediocre or poor, depending on the occurrence of disrupting political changes and the extent to which the benefits of monopoly control have been negated by admission of private sale of liquor for on-premises consumption.

The cardinal requirements for successful administration of a state-store system are that it be administered by men who are free from all political or commercial influences; that in the jurisdictions where the sale of liquor by the package and by the drink is permitted, the restrictions be in keeping with the views of a large majority of the citizens; and that among both administrators and legislators the aim of getting profits be definitely subordinated to that of promoting temperance and the general welfare.

A monopoly cannot really achieve success if any one of these requirements is lacking. No matter how competent a control board may be, it cannot accomplish much by conducting a monopoly sale of liquor by the package when

there exists, alongside, a far-flung private-license system for sale by the drink. With the admission of private interest in pushing the retail sale of liquor the principal objective of the monopoly plan is surrendered, and that at the very point where the greatest social hazards are encountered. But the restrictions on on-sales which may be regarded as consistent with state sale of liquor by the package would, under present conditions, doubtless be too severe for a number of the monopoly states. If so, there is little justification for state sale of liquor by the package.

We are convinced that the best of the state monopolies have in them greater potentialities for curbing the evils arising from the use of liquor than have the best of the private-license systems. A further comparison of the rival schemes will not be attempted, for it is idle to state a preference between inferior monopolies and inferior license systems. It should be observed, however, that more is expected of monopolies because their pretentions to beneficial social control are greater. It is not enough, therefore, for a monopoly to be merely as good as a license system in a state having similar conditions; it must be better in order to justify its existence.

Taxation

Liquor is a luxury product and a commodity that is inherently susceptible of abuse. As such it is taxed for the dual purpose of raising revenue and placing a check on its use. Having no defense against the tax gatherers, it has been eagerly seized upon in the search for additional revenues needed by federal and state treasuries. But the bootlegger has to be reckoned with when liquor taxes are fixed at high levels. The legal-liquor dealer has to recover from the consumer the cost of his goods and the taxes assessed by governments in addition to any profit; the bootlegger can undersell him and still make a larger profit from his illicit untaxed goods. What then is to determine the rate of liquor taxation? Is it need for revenue, desire to limit consumption,

or the desire to eliminate the bootlegger? All of these aims are hoped for, but the aim to get abundant revenue has been the decisive factor. Any proposal for a change in rate of taxation can be countered by a valid objection; that is, a reduction will lead to greater consumption and an increase will intensify the problem of illicit production. Hence we witness the continuation of a tax level which was arbitrarily fixed at the time of repeal without knowledge of its effect on revenue, consumption, or the bootlegger. The dual system of federal and state taxes and licenses is not satisfactory. The states will not surrender their taxing rights and the federal government will not consider lowering its taxes on spirits and beer because it is convinced that if it did the states would raise their taxes by that amount. Thus we are confronted with an undesirable condition through which the possible advantages of flexibility are lost. Moreover the dual tax collection is cumbersome and wasteful. What is most needed is an agreement whereby the federal government will collect all excise taxes and share the returns with the states. But the working out of this sensible solution will doubtless have to wait upon reform and integration of the entire federal and state tax structure.

In the case of taxation on light wines and beers the difficulties in respect to consumption and bootlegging are relatively slight. Here we find the pure revenue motive in taxation stripped of any complicating factors. If the pre-prohibition rates on wines and light beer had been reinstated, the cause of temperance might have been furthered. Actually, the tax burden is so heavy that it keeps down the consumption of the lighter alcoholic beverages. Instead of reducing the total use of alcohol, high taxes on light beverages encourage the consumption of the more highly concentrated alcoholic liquors. A decrease in taxes on all beverages would best solve the problem of defeating the bootlegger and would increase the total revenue by displacing illicit liquor with taxed products; decreased taxes particu-

larly on light beverages would contribute to the promotion of temperance.

Law Enforcement

The problem of law enforcement, encountered wherever liquor is sold, is easily modified. It can be aggravated by imposing severe limitations on sales, or it can be mitigated by liberalizing restrictions. The difficulties of preventing tax evasion are increased or reduced roughly in proportion to changes in the rate of the tax. Compliance with legal restrictions can be reasonably well enforced wherever the public honestly desires it. On the other hand, if restrictions are not well rooted in public acceptance, they cannot be enforced even by specially competent officials. These simple truths are readily acknowledged. The difficulty comes in determining what the public wishes or will stand for in liquor-law enforcement. In most states, unfortunately, there are different groups of citizens who desire widely different things, ranging from prohibition to extreme liberality in liquor selling. The problem is to ascertain the opinions held by the great body of persons who stand between the extremists. These opinions have to be elicited by special efforts because middle-of-the-roaders are inarticulate and, for the most part, apathetic about liquor control.

To the extent that limitations on selling and high taxes curb excessive individual consumption of liquor they are fully justified. When, however, they give rise to bootlegging and persistent violation of selling regulations, their value must be questioned. The important thing, therefore, is to determine the proper balance between evils connected with excessive drinking and evils arising directly from overtaxation and overregulation. It is the old question of whether the remedies are worse than the disease.

Strict control, if enforceable by virtue of strong public support and good administration, is the safest course to follow. If these factors are lacking, there is something to be said for minimum legal control and maximum reliance on

mass social pressure directed against excessive consumption. There is nothing to be said in favor of the in-between situation characterized by uneven and ineffective enforcement of a multitude of restrictions which do not harmonize with the public's notion of what is reasonable.

Temperance Education Neglected

The final aim of governmental control over the sale of liquor is the promotion of temperance. An imposition of legal restraints serves the cause of temperance in a negative way but does not check appetite nor instill capacities for self-control among individuals. The task of influencing personal attitudes toward the use of liquor is one for which democratic governmental agencies are not well equipped. How is a liquor-control body to formulate a temperance-education program which will not suffer violent attack from some group of citizens? Can a licensing authority undertake to undermine a business, the pursuit of which it authorizes? Will consumers of liquor tolerate instruction by public servants? So far as we have been able to determine there have been no significant contributions in the field of temperance education during the two and a half years since repeal.

The difficulties are great and we are not prepared to advocate a plan of action that would give promise of overcoming them. But the lack of positive efforts to further the cause of temperance must be noted as a serious omission in the development of rational control of the socially hazardous liquor business.

Chapter Two

THE FEDERAL ROLE

PROHIBITION, for all its unworkability, was a simple clear-cut national policy. The only modification of it in fourteen years came about indirectly as a result of strengthening or relaxing law-enforcement activities. Upon repeal, notwithstanding the fact that responsibility for controlling the sale of alcoholic beverages was turned back to the individual states, the situation confronting the national government became more complex. The federal government's duty toward commonwealths which retained state-wide prohibition had to be considered, the interstate features of the liquor business in wet states called for attention, and new rates of taxation had to be substituted for the medicinal-liquor rates of the prohibition era. The Seventy-third Congress, convened a month after repeal, passed a liquor-taxing act but made no attempt to define a comprehensive federal policy covering the government's new relationship to the liquor problem. It was perhaps fortunate that this was so, for legislation might have committed the government to some ill-advised form of participation in liquor regulation that would have interfered with the states in working out their experiments.

Stated Federal Objectives

The nearest approaches to formulation of a federal policy on what might be called the social aspects of liquor control—as distinguished from revenue aspects—are to be found in the Democratic party's platform declaration made prior to repeal and in the President's proclamation issued upon ratification of the Twenty-first Amendment. Urging

repeal of the Eighteenth Amendment, the Democrats in 1932 advocated the promotion of temperance, prevention of the saloon's revival, and control of the liquor traffic by the individual states. "We demand," said the Democrats, "that the federal government effectively exercise its power to enable the states to protect themselves against importation of intoxicating liquors in violation of their laws." The Republicans, then in office, avoided making demands of the federal government, but reflected the same opinion about these matters when they declared in their platform that the states should be allowed "to deal with the problem as their citizens may determine, but subject always to the power of the federal government to protect those states where prohibition may exist and safeguard our citizens everywhere from the return of the saloon and attendant abuses." These political views regarding protection of dry states were embodied in the text of the Repeal Amendment which prohibited the transportation or importation of intoxicating liquors into any state in violation of its laws.

The President, in his repeal proclamation, called attention to the new clause in the Constitution designed to protect dry states, and also asked that "no state shall by law or otherwise authorize the return of the saloon either in its old form or in some modern guise."[1] The President had no power to prevent return of the saloon and did all that was appropriate for him to do when he forthrightly spoke against it. Nor did Congress have authority either to ban it in the states or to transform it by disguise or improvement. The saloon has returned in a number of states where the people seem to want it. Control of the sale of liquor to the ultimate consumers is, as indeed it should be, the exclusive concern of state governments.

The federal government has done little to protect dry states, even though legislative authority to act in this connection is not wanting. After repeal the Department of Justice did not concern itself with enforcement of the laws prohibiting shipment of liquor into dry states. Everything

[1] Proclamation of December 5, 1933.

relating to liquor-law enforcement was left to the Treasury. But agents of the Treasury Department possessed no powers of arrest except in cases where violations of the revenue laws were concerned, hence they could do nothing to prevent shipment of taxpaid liquor into dry territory.

What mattered most to the federal authorities was the collection of liquor taxes and elimination of the bootlegger as a tax evader. Revenue has been, first and last, the vital policy. The government is always ready to furnish its twenty-five-dollar "license," in the form of an occupational stamp tax, to the old-fashioned saloon as well as to any new and improved type of drinking establishment. Moreover the stamp is granted to saloons in dry states as well as in the wet ones. And for a year and a half, under a law since repealed, an additional penalty charge of one thousand dollars was imposed for the privilege of exhibiting the federal stamp on the premises of a *saloon* in a *dry* state! Thus, the aspirations and pledges most stressed before repeal, rejection of the saloon and protection of dry states, have turned out to be the least important elements in the federal government's activities relating to liquor.

Initial Moves by the Federal Government

When it became clear in midsummer of 1933 that repeal was not far off, the government made a large cut in the prohibition-enforcement personnel. A further reduction of 50 per cent followed in August. These premature reductions were made as measures of economy. The bootleggers enjoyed even greater prosperity and laid their plans for selling untaxed liquor in the event of repeal and the imposition of excise taxes on legally produced goods.

Import Restrictions

Prospective gains in excise taxes and savings in expenditure for law enforcement did not satisfy the government; it early sought other means of exploiting the newly legalized liquor traffic. No sooner had the thirty-sixth state voted for

repeal than plans were laid in Washington for restrictions on imports of liquors and wines as a means of forcing foreign countries to grant trade concessions to the United States. It was reasoned that France, England, Spain, and other countries would greatly benefit from the opening of the United States market to their wines and liquors and that these countries should not reap benefits from repeal without giving some trade advantages in return. France would have to agree to take more apples, wheat, and pork before she could receive a high quota for wines, brandies, and liqueurs. It was the same with other countries.

This proposed restriction of imports, by quotas, was the fantastic arrangement contrived by an interdepartmental federal committee on liquor control and taxation. Here was a new business suddenly come to life with limited supplies of goods on hand. The bootleggers alone had established businesses and they had most of the liquor. The legal retail dealer needed foreign whiskies and wines to meet the demand for alcoholic beverages of good quality. The American distiller needed matured foreign whiskies to blend with newly produced whisky and spirits. The sensible thing to do under these circumstances was to cut in half the extremely high tariff of $5.00 per gallon on proof spirits and to exempt the foreign goods from the excise tax. A $2.50 duty would have been sufficiently high considering this country's need for stocks of goods and the threatened competition of the bootlegger with his untaxed supplies.[2] But, instead, the tariff of $5.00 per gallon was allowed to stand and a $2.00 excise tax was piled on top of it with quota restrictions thrown in.

Of course the quota system did not bring about the revision of trade treaties. Foreign governments knew that America would be compelled to buy the kinds of wines and whiskies she could not produce, and they knew further that sales of spirituous beverages over a barrier of $7.00

[2] Prior to prohibition, imported alcoholic beverages had been subject to a tariff of $2.00 per gallon and had not been subject to an excise levy.

per gallon would not be large enough to make it worth their while to take America's surplus farm products. On March 10, 1934, the Federal Alcohol Control Administration announced that the Secretaries of Agriculture and of the Treasury had given notice that "the amount of alcoholic beverages to be imported from any country shall be without limit" for the third import period, May and June. Identical announcements were made for the fourth, fifth, sixth, and seventh import periods. This unwinding of red tape, solemnly undoing what was needlessly begun, required the attention of several high governmental officials and all to no purpose.[3] The really significant thing about the import quota system, however, was the attitude manifested toward the newly established liquor business, namely, that it was to be *used* by the federal government to yield some advantage to other interests.

Advancement of the Farmer's Interest Attempted

Another tribute extracted from the liquor industry, beyond the heavy excise taxes and license fees, was the marketing agreement between distillers and the Agricultural Adjustment Administration demanded as an aid to agriculture. The distillers were asked to pay a processing tax of $0.05 per bushel on the grain they used, in addition to the parity price paid the AAA, which represented the difference between the price of grain in 1934 and the average price of 1926. There were early hopes among officials of the AAA, who knew a great deal more about grain surpluses and prices than they knew about distilling, that beverage alcohol would be made from grain alone. But distillation of alcohol from grain, even without a processing tax and parity payments, is more costly than distillation from molasses, and the alcohol, when carefully distilled, is the

[3] The director of the FACA received notice on April 1, 1935, that the Secretary of Agriculture and Acting Secretary of the Treasury had signed an agreement permitting unlimited importation until further notice. This concession was made at a time when warehouses were bursting with unsold imported beverages.

same regardless of the raw material from which it is produced. The molasses distiller, however, could not be persuaded to pay a parity price as a bounty for the benefit of the grain farmer. The grain distillers were therefore permitted to discontinue parity payments in April, 1934.

There was no more reason to subject the manufacturers of liquor to an agreement with the AAA to increase the consumption of grain than there would have been to require that manufacturers of leather pocketbooks and luggage use pigskin regardless of manufacturing cost and the consumers' demand for other types of leather. But the farmers' friends were not concerned about whether the alcoholic beverage consumer might prefer rum distilled from cane juice, whisky distilled from rye, vodka from potatoes, or gin from black-strap molasses; they wanted him to have spirits obtained from the farmers' surplus grain regardless of taste, quality, or cost.

It is clear to see that the government's first moves were characterized by an eagerness to reap advantages from the liquor business. The manufacturer was to pay a large excise tax on each gallon of distilled spirits, amounting to four or five times the value, at wholesale, of the goods produced; the government was to use its authority over liquor importation as a lever with which to pry open wider markets for American agricultural exports; the grain farmer was to reap a direct advantage under agricultural marketing agreements. Money was to be saved on law enforcement while new liquor taxes were rolling in. The bootlegger could scarcely have hoped for more favorable arrangements. Meanwhile the consumers of liquor were to look after themselves as best they could. It was the part of the national government to derive benefits from liquor; the states could wrestle with problems of social control.

Protecting Dry States

There were abundant legal provisions forbidding shipment of liquor into dry states. They ranged all the way

from an injunction against it in the Constitution to provisions in the unconstitutional N R A liquor codes declaring transportation of alcoholic beverages in violation of a state law an unfair method of competition. Between these extremes stood the Webb-Kenyon Act, passed in 1913, which divested intoxicating liquors of their interstate character and enabled states to exercise control over liquor crossing their borders.[4] This act, however, contains no penal provision; its violation is not a federal offense. The Reed Amendment to the post-office bill of 1917, except for provisions relating to advertising, was reincorporated in the Liquor Taxing Act of 1934 and provided that whoever ordered, purchased, or caused to be transported intoxicating liquor into a state which prohibits the sale of intoxicating liquor for beverage purposes should be fined not more than one thousand dollars or imprisoned not more than six months, or both.[5]

Illegal "Tax" on Illegal Business

In addition there was an odd federal law enacted during national prohibition that came in for more attention than all the others until its repeal in 1935. That law provided in Section 701, under the disguised caption "miscellaneous occupational taxes," that:

> There shall be levied, collected, and paid annually . . . a special excise tax of $1,000, in the case of every person carrying on the business of a brewer, distiller, wholesale liquor dealer, retail liquor dealer in malt liquor, or manufacturer of stills . . . in any State, Territory, or District of the United States, contrary to the laws of such State, Territory, or District, or in any place therein in which carrying on such business is prohibited by local or municipal law.[6]

Section 701, as it was familiarly known, caused endless

[4] Act of March 1, 1913, 37 Stat. 699.

[5] Sec. 5 of the Act of March 3, 1917, 39 Stat. 1069, as amended by the Liquor Taxing Act of 1934; this section was repealed by the Liquor Enforcement Act of 1936.

[6] The Revenue Act of 1926, Sec. 701.

confusion and controversy. Treasury officials began to collect this penalty tax in September, 1934, and only called a halt in the summer of 1935 after more than one federal district court had cast doubt on its constitutionality.[7] During this time the Treasury collected more than $600,000 from dealers who were operating illegally in dry states.

The thousand-dollar special excise tax was intended as a prohibitive assessment on illegal businesses in localities where the local law-enforcement officials were corrupt or inefficient or merely inattentive to duty. The Treasury cannot possibly contend, however, that this tax was collected by it for the purpose of stopping or even discouraging illegal liquor sales in dry states. Imposition of the thousand-dollar penalty kept down the total number of illegal sellers, but at the same time it helped those who stayed in business by reducing the number of competitors. Before state prohibition was repealed in Texas the tax was being collected from some violators in instalments; in Oklahoma, another dry state, the instalment method of payment was being used with scarcely a single exception. The illegal saloon keeper was paying the government a supposedly prohibitive tax *as he earned it* from an uninterrupted illegal business!

Reed Amendment Unenforced

Nothing was being done to enforce the Reed Amendment, although under its provisions the government was, all the while, responsible for seeing that the illegal dealers to whom it issued tax stamps did not obtain liquor supplies with which to carry on business. If their supply consisted of untaxed bootleg liquor produced within the state, it was the duty of Treasury officials to seize it. If the stock consisted of taxpaid goods obtained from a wet state the dealer was subject to federal prosecution under the Reed Amendment for having ordered, purchased, or caused liquor to be transported in interstate commerce. Thus the law about

[7] Section 701, apparently doomed by the courts, was repealed in the "soak-the-rich" tax law of 1935.

which no question of constitutionality arose was being completely disregarded while the revenue clause of doubtful validity was being enforced with vigor. Instead of trying to keep liquor out of the hands of sellers in dry states the government contented itself with collecting a tax which was in the nature of a license fee to conduct an illegal business.

N R A code provisions forbidding the transportation of liquor into states for sale in violation of the laws of such states amounted to little more than gestures. No distiller or wholesaler who valued his permit to engage in business was likely to make open, illegal shipments into dry states. But there were many loopholes which furnished unscrupulous dealers the opportunity to supply dry territory without much risk. A wholesaler could sell excessive quantities to licensed dealers in wet regions bordering on a dry state. Bootleggers would run these surpluses across the lines. But the wholesaler who was subject to the code had nothing to do with that part of it and the government never got around to making a code for bootleggers.

The federal government's early record in protecting dry states cannot possibly be defended. It has been fraught with hypocrisy and deceit. Cupidity has been the decisive factor in determining action in dry states. The least to be hoped for from the federal government in the future is that it may discontinue issuing an occupational stamp tax to illegal dealers for the sale of goods which can be obtained only by breaking a federal law.

The Federal Alcohol Control Administration

The record of the federal government in dealing with liquor is seen in a more favorable light when one considers the good work of the Federal Alcohol Control Administration. This organization devoted its attention exclusively to establishing high business standards and promoting fair trade practices for the benefit of both the producer and consumer of liquor. The F A C A—as it will be referred to hereafter—was organized to aid in solving repeal problems

rather than to extract benefits from the liquor traffic. Its purposes stand out in sharp contrast to the acquisitive interest which, as we have seen, has characterized other federal activities relating to liquor.

Origin of the F A C A

The F A C A was created under authority of the National Industrial Recovery Act which was declared unconstitutional by the Supreme Court on May 27, 1935. A Code of Fair Competition for the Distilled Spirits Industry, drafted under this act, defined the powers of the F A C A. On December 4, 1933, the day before ratification of the repeal amendment, the President formally established the F A C A by executive order.[8] Codes of fair competition were also promulgated for the Distilled Spirits Rectifying Industry, the Brewing Industry, the Wine Industry, the Alcoholic Beverages Importing Industry, and the Alcoholic Beverages Wholesale Industry. Each of these codes made provision for the F A C A as the code-administrative authority of last resort.

The F A C A was perhaps the outstanding oddity among the emergency organizations of the New Deal. Although it was established under an act designed to stimulate industry, it was nevertheless conceived as an instrument for holding the liquor business in check. It possessed powers of life and death over the industries whose codes gave it life. These powers included the right to grant or revoke permits to engage in the alcoholic beverage industry, and the right to control—that is, restrict—plant capacity and production.[9] Although dependent for its existence upon codes governing private industries, it was a wholly independent governmental agency responsible only to the President. It was at once a parasite of the liquor industry and its sovereign.

The several codes administered by the F A C A differed materially from other industrial codes in that they were so

[8] Executive Order No. 6474.

[9] Permits do not apply to the brewing industry.

designed as to recognize the social significance of the liquor industry rather than the general economic emergency. The preamble of each one declared that Congress had not had opportunity to legislate on liquor control following repeal of the Eighteenth Amendment, that the Twenty-first Amendment provided for the protection of dry states against transportation or importation of intoxicating liquors into any state in violation of its laws, and that it was in the best interests of the public that all industries engaged in the production or distribution of alcoholic beverages, except the brewing industry, should "limit their activities to their reasonable and immediate requirements until such time as Congress may consider appropriate legislation relating to such industries." Thus, in the absence of Congressional action on the liquor question, the codes were conceived as being the best available means of governing industries which needed to get their bearings after having been outlawed for fourteen years.

The Outlook at Repeal

Let us examine the situation that existed when the F A C A began its task. The liquor business had suddenly come to life, with seemingly unlimited prospects. To the hundreds of thousands of men who had been anxiously seeking opportunities for making a livelihood this new field appeared most attractive. It alone was not overcrowded; it was not even occupied except by bootleggers. Men who knew nothing about the business were clamoring for permits and licenses which, as they thought, would open the door for them to prosperity. Bootleggers and racketeers had the advantage of knowing something about the business. Some of them resolved to "go legal," while others, with characteristic cunning, reasoned that they could continue to do well outside the pale of a highly taxed and strictly licensed legal business. Then there were the experienced distillers, rectifiers, importers, and wholesalers of preprohibition days who were anxious to reenter business. It was inevitable that

the unoccupied land of promise would soon be seriously overrun with new settlers.

At the time of repeal supplies of properly aged whiskies were limited and prices were high. There was plenty of alcohol, however, which could be called whisky after the addition of a little coloring and flavoring matter. After fourteen years of prohibition few persons retained a discriminating taste for domestic liquors. Many persons, indeed, knew only the bootlegger's products. Fancy bottles and pretentious labels could be depended upon to gloss over poor quality, and, if these devices were insufficient, the arts of advertising could be brought into play to influence bewildered consumers. The conditions were exactly right for building the newly legalized liquor business upon foundations of deceit and sharp practices which would have worked immediate injury to the public and irreparable damage to businessmen, most of whom fervently wished to establish themselves in the confidence of the public.

Stabilization of the Industry

The FACA was called upon to issue the basic permits under which distillers, rectifiers, wholesalers, and importers were to operate. Regulations had to be devised to prevent misbranding of liquor, to cover guarantees to wholesalers, to define standards of identity of various alcoholic beverages, and to prevent false advertising of spirits, wine, and beer. By these activities, too technical to be elaborated upon here, the FACA was able to set up stabilizing controls for the entire alcoholic-beverage industry. It can scarcely be denied that industrial chaos was averted by the timely and competent efforts of the FACA.

The quality of the administration was derived from the character of its personnel. The choice of Mr. Joseph H. Choate, Jr., as Director of the FACA was a happy one. Long an outspoken advocate of repeal, he was not hostile to the liquor industry and conceived it to be as much his public responsibility to aid the business in establishing itself

on a proper footing as to safeguard the public against possible abuses. This friendly attitude, maintained without sacrifice of independence, won the confidence and good will of the liquor manufacturers and wholesalers and made cooperation possible. Mr. Choate's associates also deserve praise for their skill and industry, and for their devotion to what was largely a thankless task. The work of the F A C A was characterized by fairness and long-suffering patience in dealing with problems of a most perplexing nature. There was little or none of the peremptoriness and haughtiness that is all too often associated with federal administrators into whose hands has been thrust new power.

It cannot be said that today everything is as it should be in the liquor business or that it is managed by paragons. There are undesirable persons in the business, according to admissions of members of the trade, and unethical practices are by no means unknown. But it is unquestionably true that the ethics of the business is higher than it would have been if the F A C A, under Mr. Choate's leadership, had not, during the early months of repeal when commercial chaos threatened, and later, when extremely severe competition set in, striven for fair dealing.

Branding and Labeling

The F A C A was concerned not only with stabilization of business practices in the manufacture and wholesaling of alcoholic beverages, but also with protection of the ultimate consumer. Accordingly it prescribed regulations aimed to prevent misbranding of alcoholic beverages. They were deemed to be misbranded if, as in the case of distilled spirits,

> the bottle or any label on the bottle, or any individual covering, carton, or other container of the bottle used for sale at retail, or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer, contains any statement that is untrue in any particular, or directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression of the distilled spirits.

The promulgation of this regulation marked a significant development in the government's intervention to require honesty in trade. It went much further than prevention of open fraud such as the substitution of imitations for genuine products. The seller of alcoholic beverages had to avoid creating an *impression* that was misleading. He could not employ the familiar device of telling the truth, or giving a caution, in small type tucked away in some obscure place. Under the liquor codes the responsibility was clearly placed on the seller, rather than on the buyer, to see that the latter did not gain a wrong impression of what he was buying. It is to be hoped that similar standards will some day be established for the benefit of the far greater number of persons who buy necessities, such as food, shoes, and clothing.

The regulations provided for certain mandatory label information, including a statement of the alcoholic strength of distilled spirits and the net contents in bottles, the name and address of the producer, and a statement of the aggregate amount of coloring or flavoring materials used. Labels were required to show the age of whisky. In blended products, the age of the youngest whisky had to be stated, together with the percentage by volume of the straight whisky or whiskies, and the volume of neutral spirits and neutral whisky when either or both of these were contained.

It was further provided that labels had to be placed on bottles in such a way and printed in type of such a size as to make them readily legible. The words *guaranteed*, *warranted, certified,* or similar words could not be stated on any label, unless there existed a "bona fide guarantee creating an intelligible and enforceable obligation to the purchaser of the distilled spirits so labeled." Similarly, the F A C A's regulations provided that a standard liquor bottle should be "made, formed, and filled" so as not to mislead the purchaser. Even though the label correctly specified the net contents of a liquor bottle, the bottle according to the regulation, was held to mislead the purchaser if it were a type to appear to the consumer-purchaser, "upon visual

inspection in the ordinary course of trade, to hold distilled spirits in an amount substantially in excess of the amount which the bottle is capable of holding."

It should be noted that an exception was made of beer in the regulations requiring a statement of alcoholic strength. This is a matter of some importance, for there was an early tendency among brewers to compete with one another in raising the alcoholic content of beer. The public, unfortunately, had become alcohol-minded about beer during the time before repeal when discussion of beer legislation largely related to alcoholic percentages, that is, whether or not beer of 3.2 per cent alcoholic content by weight and 4 per cent by volume was an intoxicating beverage. There was a feeling that post-repeal beer should be stronger than that sold during prohibition, and there was a tendency to regard 5 per cent beer as a better bargain than 3.2 per cent beer when equally priced. The FACA with the support of the brewing industry put a stop to a possible race for more potent beer by providing in the code for the brewing industry that the alcoholic content of beer should not be stated unless specifically required by state law. The code further provided that "the words *strong*, *full strength, extra strength, high test, high proof, prewar strength, full old-time alcoholic strength,* or other similar expressions, shall not be used, except where required by state laws or regulations." Generally speaking, light beer is a harmless beverage, but beer that is heavily loaded with alcohol is potentially harmful because it is relatively cheap and can be consumed in large quantities. For this reason the importance of placing a check on the marketing of beers through a competition in alcoholic strength can scarcely be overemphasized.

Other Accomplishments of the FACA

Among the more important accomplishments of the FACA was preventing manufacturers and wholesalers from having an interest in retail outlets. The code for each

industry—distilling, rectifying, wine-making and brewing—contained this safeguard against the "tied house" of pre-prohibition days. The tied-house arrangement was perfectly suited to the operations of so-called racketeers. Indeed it was the very method used by them in other kinds of business. They would have exploited the newly established liquor business to the fullest extent had it not been for state statutes and code provisions prohibiting combination of the interests of producers and retailers.

In this historical discussion of the F A C A and the N R A codes no mention has been made of the several code authorities, divisional committees, and regional boards of the liquor industry which performed valuable services until the codes were invalidated. We have not been concerned with those problems in manufacturing and selling liquor which are the internal affairs of the industry, hence no examination of the working of the liquor-code authorities was made. We wish in passing, however, to commend the Distilled Spirits Institute for its selection of Dr. J. M. Doran as its chief administrator. While an official of the Treasury, Dr. Doran had many years of experience—before and during prohibition—in regulating the distilled-spirits industry. Because of his experience, integrity, and cooperative attitude, he has enjoyed the confidence of governmental officials and members of the distilling industry; his influence upon code administration and the industry has been unmistakably beneficial to the public interest.

The Treasury Department

It is the duty of the Treasury to collect excise revenues levied on alcoholic beverages produced at home and to collect the excise and customs duties on imports. The Alcohol Tax Unit of the Internal Revenue service assigns agents to all manufacturing plants. There the production is measured as it comes off the stills. Every drop of liquor is accounted for in the stills, cistern rooms, and warehouses.

Taxes are collected when the liquor moves into the channels of trade. In addition the Alcohol Tax Unit has the duty of protecting the revenue by tracking down illicit production, and the Coast Guard, also a unit of the Treasury, is occupied, in part, with prevention of liquor smuggling. These functions do not differ from those formerly exercised by the Treasury. A more detailed discussion will be found in a later chapter on law enforcement.

Federal Alcohol Administration Act of 1935

The Federal Alcohol Control Administration was completely shorn of its powers by the Supreme Court's decision invalidating the N R A codes of fair competition.[10] It no longer had authority to issue or revoke basic permits for distilling, rectifying, importing, and wholesaling alcoholic beverages. Nor could it enforce compliance with any of its regulations affecting advertising, standards of fill, labeling, and tied houses.

The Treasury, Federal Trade Commission, and Pure Food and Drugs Administration were called upon, temporarily, to curb liquor dealers who might resort to false advertising, misbranding of liquor, and the use of misinforming labels. The Treasury, exercising powers already possessed, filled the breach in respect to labeling of liquor bottles. The Federal Trade Commission took jurisdiction over misleading advertising. For example, the Trade Commission ordered a certain dealer in wine to discontinue the use of the term "Sparkling Burgundy" (unqualified) as applied to artificially carbonated wine, and in another instance required that a dealer discontinue using the words "bottled in bond" and "42 proof" as applied to wine.[11] The Pure Food and Drugs Administration was called upon to deal with instances of adulteration and misbranding which amounted to violations of the Food and Drugs Act.

[10] The Schechter decision.
[11] Federal Trade Commission Stipulations Nos. 1387 and 1412.

Apparently, however, little thought was given to a permanent apportionment of the work of the FACA among existing federal departments and bureaus. A few voices were heard feebly to suggest that since the foundation of federal liquor-control administration had been laid, these agencies could take care of all of the essential work of the FACA and it was therefore unnecessary to create a new *ad hoc* liquor-control administrative agency. But the officials of the FACA who stood amidst the wreckage of the codes thought only of rebuilding by valid statute a new organization that would closely resemble the one which had developed code controls.

Most persons, within and without governmental circles, who were acquainted with federal liquor regulation had a high regard for the FACA. It had fallen a victim of the Supreme Court's decision not because of any defects in its work or unwarranted jurisdiction, but solely because its powers were derived from the ill-fated recovery act. The feeling of most persons seemed to be that, inasmuch as the FACA's destruction was in the nature of an accident, it was only fair to restore it on a firm foundation. State liquor-control administrators, meeting in extraordinary session to consider problems raised by the fall of the FACA, passed a resolution by unanimous vote asking the President and Congress to set up a new federal alcohol-control administration or a similar "appropriate tribunal" which would have the duties and responsibilities previously belonging to the FACA. The distillers and importers took the same position.

Shortly after the Supreme Court's decision, a draft of a liquor-control bill, known as the administration measure, was submitted to Congress. This bill was intended to reproduce the principal provisions of the liquor industry NRA codes and to provide for a new federal alcohol administration, as successor to the FACA, that would have most of its powers and duties. The bill was altered in several im-

portant respects, however, by a sub-committee of the Ways and Means Committee to which it was referred.

New Unit in the Treasury

A controversy developed as to whether the newly proposed alcohol-control agency should enjoy an independent status, like that of the F A C A, or be set up within the Treasury as a special unit. The Ways and Means Committee disregarded the advice of those who were by their experience best acquainted with the problem of federal liquor control.

At the hearings on the proposed bill, Mr. Joseph H. Choate, Jr. most ably presented the case against including the Federal Alcohol Administration in the Treasury. He pointed out that the Treasury's traditional concern with the liquor industry had been collection of revenue and suppression of lawbreakers who sought to evade the excise tax.

> The Treasury [said Mr. Choate] has not been an organization whose duty it was to study and understand the liquor business, the interests of the public in that business, or the methods by which that business ought to be carried on in order to subserve the interests of both the public and the state governments. It has been a creature of one idea, that one idea being, quite properly, to get revenue and get it as fast and as copiously as it could. It knows nothing whatever about the jobs which in this bill you have put upon the administrator, the jobs of regulating advertising and labeling, of suppressing unfair trade practices, of suppressing the attempts to revive the tied house.

It is conceivable that the Ways and Means Committee discounted Mr. Choate's advocacy of an independent control administration on the ground that he was quite naturally concerned with the prestige of the work with which he had been occupied. But the Treasury agreed with the view held by Mr. Choate and there was no mistaking the Treasury's position. Mr. Harold N. Graves, speaking for Secretary Morgenthau, told the Committee: "He feels that the functions that are to be intrusted to the Administrator under this legislation are not germane to the function of the Treas-

ury Department, and that therefore they should be left to an agency outside the Treasury Department."

But the House disregarded the advice of the only persons whose views in the matter were of value and stubbornly insisted on placing the alcohol administration in the Treasury. How is this contrariness to be explained? The reason most often mentioned, though there is no proof of it, is that Congressmen believed the prospects of political patronage would be enhanced if the unit were placed in the Treasury. It would be easier to slip in favorites under a department head who would be far removed and preoccupied with weightier things than the employment of subordinates in an unwanted bureau. If the new administration were to be set up as an independent unit, Mr. Choate might be willing to continue as administrator and it was known that he would turn a deaf ear to patronage pleas. The Senate appeared to favor establishing the alcohol administration outside the Treasury but was content to yield on this point when the House agreed to abandon its demand for bulk sales of liquor. An act creating "the Federal Alcohol Administration as a division in the Treasury Department" was passed and approved by the President on August 29, 1935. This arrangement was superseded, however, by the Liquor Tax Administration Act of 1936. Through the new law the Federal Alcohol Administration was taken out of the Treasury and made an independent establishment of the government. A further change provides that the Administration shall be composed of three members appointed by the President. Appointment of all employees of the Administration, other than attorneys and experts, are subject to the civil-service laws.

Bulk Sales of Liquor

The matter of bulk sales of liquor also caused contention in the hearings of the 1935 bill which set up the liquor unit in the Treasury.

When the Committee's revised bill came up for public

hearing,[12] it was discovered that, contrary to the wishes of the President, the Treasury, and the F A C A, there had been inserted a section which would legalize bulk sales.[13] The right to sell liquor in bulk had been urged for some time by the cooperage interests. Naturally, their desire was to sell more kegs and barrels. They contended that bulk sales, by lowering costs of transportation, would reduce the prices of legal liquor and that lower prices were necessary to drive out the bootlegger. A few wholesale dealers joined the cooperage makers in advocating this view. The bootleggers, who stood to benefit even more than the barrel makers, were discreetly silent.

The storm of protest which arose over the bulk-sales proposal was of surprising intensity. The distillers were unequivocal in their opposition. The importers and rectifiers also registered their strong disapproval. Everyone in the government service who had anything to do with liquor control was unalterably opposed to it. Mr. Harold N. Graves, assistant to the Secretary of the Treasury in charge of liquor regulation, stated before the Ways and Means Committee that it was the opinion of the Treasury that the bulk-sales provision "if enacted under present-day conditions would open the doors wide to the illicit producer and distributor of distilled spirits." "The objection," continued Mr. Graves, "is that with 225,000 places in the United States today which sell liquor at retail, there would be great danger that many of these places would find it a simple matter to introduce bootleg spirits into these barrels." State liquor-

[12] Hearings on H. R. 8539, June 19 and 20, 1935.

[13] The bulk-sales section reads, "No basic permit issued under this Act shall contain any condition prohibiting, nor shall any rule, regulation, or order issued under this or any other Act of Congress, prohibit, the use or sale of any barrel, cask, or keg, if made of wood, and if of one or more wine gallons capacity, as a container in which to store, transport, or sell, or from which to sell, any distilled spirits, wine, or malt beverages. This subsection shall not apply to any condition in any basic permit issued under this Act, or any rule, regulation, or order issued in connection therewith to the extent that such condition applies in a State in which the use or sale of any such barrel, cask, or keg is prohibited by the law of such State."

control administrators were unanimous in condemning the bulk-sales proposal on the ground that it would add enormously to the difficulties of determining the origin of liquor and whether or not it was tax paid.

There is at present enough trouble with the bootlegger even though shipment of liquor is permitted only in numbered, identifiable bottles, sealed with strip stamps bearing serial numbers and the name or symbol of the taxpayer.[14] It would be next to impossible to trace and identify liquor shipped in kegs or barrels. Notwithstanding this, the House of Representatives rejected the arguments of all who had as their aim defeat of the illicit liquor seller and supported the patently specious reasoning of the coopers. It was a clear instance of going against the public interest. The Senate saved the day by insisting on a prohibition against bulk sales and effecting the compromise on the position of the new agency.

Principal Functions of the F A A

Basic Permits

The duties prescribed by the 1935 act for the liquor-control agency in the Treasury followed the general line pursued by the F A C A in its liquor-codes administration. Provision was made for basic permits to engage in:

1. The business of importing distilled spirits, wine or malt beverages.
2. The business of distilling spirits, producing wine, rectifying or blending spirits or wine, or bottling distilled spirits.
3. The business of wholesaling distilled spirits, wine, or malt beverages.[15]

It is noteworthy that brewers were not included in the basic-permit provision although wholesalers of malt beverages were required to have them. The brewers earnestly

[14] Except shipment from one distillery to another or from distillery to rectifier, which may at present be made in bulk.

[15] State monopolies and political subdivisions of states were exempted from the permit provisions.

desired that a sharp distinction be made between their business and that of distilling and wine making. The brewing code had not previously required permits, and since this legislation was an attempt merely to reproduce the FACA regime there was no real effort made to include brewers in the permit system. It was freely admitted that it would be logical to include them along with wholesalers of beer and ale. No heed was paid to the wholesalers who, following the same logic, asked that they be exempted in the same way as the brewers.

The permit system is, we believe, a desirable one in that it will provide a ready means of controlling manufacturers and wholesalers who attempt to evade the law or official regulations. In addition it furnishes a method of keeping undesirable persons out of the liquor-distilling, importing, and wholesaling business.

Exclusive Outlets and "Tied Houses"

The 1935 act made it unlawful for a person engaged in the liquor business to induce a retailer to handle his products to the exclusion of the same kind of products offered for sale by other persons in interstate or foreign commerce. Similarly, "tied houses" were made illegal. A person engaged in interstate or foreign trade in liquor may not have an interest in property owned or used by a retailer; may not furnish signs, supplies, money, or anything of value to a retailer, except within limits permitted by the administrator; may not extend excessively long credits; and may not require a retailer to take a certain quota of goods.

Of all regulatory tasks in connection with liquor control, the prevention of "tied-house" practices is probably the most difficult. If a retailer chooses to sell a single brand of beer, it is neither reasonable nor legally possible to force him to sell brands made by other manufacturers. Furthermore, if a retailer desires to show partiality toward one distiller's products, he need buy only the smallest quantities of goods from others to satisfy the law prohibiting exclusive

outlets. It is next to impossible to determine whether the retailer has made free choices according to his business judgment, or whether he has been induced to make his choice by the offer of some concealed reward, perhaps also by some threat of a racketeering thug.

The evils of the "tied-house" system are manifested locally in the retail selling field. This field of regulation belongs to the states. Conceivably a state may conclude that frank acceptance of a "tied-house" system is advantageous on the ground that a large concern, having more retail outlets, is more easily watched, and has more at stake so that it will more faithfully observe regulations than will scattered free houses. Or a state may hold that the insidious forms of "tied-house" practices are too much to cope with and decide that it is better to concentrate on more certainly enforceable forms of regulation.

The reason given for having the federal government enter the situation is that a retailer in one state may be tied to an out-of-state wholesaler or manufacturer beyond the reach of the state in which the retailer has his business. But a "tied-house" arrangement cannot be proved anyway unless the retailer's part is established, and if this is done, the state has jurisdiction to correct the matter if it wishes. In any event, we cannot feel it appropriate for the Treasury or the new federal liquor agency to assume a task having to do with retail liquor selling throughout the Union—a task that in all probability will be beyond its powers, except in a few instances of crude and unskillful attempts to evade the "tied-house" law.

Labeling Regulations

The labeling provisions in the 1935 act were practically the same as those formulated by the F A C A in its administration of the codes. Liquor-bottle labels are designed to protect the consumer by furnishing him with accurate information as to what is in the bottle he purchases. The regulations are intended

to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straightforward and truthful. They should not be confined, as the pure food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle.

However, the great majority of consumers have been not at all interested in or appreciative of the federal government's efforts to protect them in their purchase of liquor. They buy for the most part on a basis of price. They are interested, of course, in the alcoholic strength, the age, and the quantity in a bottle, but they go on the assumption that variations in these factors will be reflected in prices. We are of the opinion that if the Pure Food and Drugs Administration were to be held responsible for prohibiting misbranding of liquor, and the Federal Trade Commission were to safeguard against misleading advertising and false representations about the kind and quality of liquor offered for sale, the interests of the liquor consumer would be adequately served.

Investigation and Study

In the original draft of the bill to provide for continuing the work of the F A C A the first duty of the new administration was to make investigations and studies and to report its findings to the President together with recommendations concerning the "production, importation, distribution, and consumption of alcoholic beverages, including social and economic problems connected therewith."[16] This feature

[16] "It shall be the duty of the administrator to make investigations and studies and to report thereon to the President from time to time, together with recommendations with respect to matters necessary for the proper performance of the powers and duties conferred upon the administrator, with respect to—

1. Production, importation, distribution, and consumption of alcoholic beverages, including social and economic problems in connection therewith;

2. Monopolistic practices and unfair methods of competition, concentra-

was eliminated by the Ways and Means Committee notwithstanding the fact that Mr. Choate earnestly recommended it be restored, holding it essential that some agency of the federal government should be charged with the task of "observing and keeping in touch with all of the endless problems of this industry."

The states cannot collectively make nation-wide studies of trends in consumption of liquor, and of the effects of taxation, regulations, and current trade practices. Hence they cannot furnish a complete picture of changes in the liquor-control problem as a whole. In reviewing the work of Congress in creating the Federal Alcohol Administration we find that duties appropriate to the Federal Trade Commission and Pure Food and Drugs Administration were given rather to it, but that the task of investigation and study, which more than anything else would have justified creation of a new administrative agency, was left out of account.

Future Federal Policy

What should be the federal government's part in liquor control? Should it, as a matter of national policy, aim to promote social welfare by the exercise of regulatory powers? Or should it be content, as at present, to collect duties and excise taxes, to prosecute those who evade them, and to see that fair business practices prevail among liquor manufacturers and wholesalers?

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tion of ownership in the alcoholic beverage industries, including control of retail outlets, and prices;

3. Advertising, labeling, and merchandising methods with respect to alcoholic beverages, that are not in the public interest;

4. Enforcement of the 21st amendment;

5. State laws;

6. Methods of promoting temperance;

7. Use of domestic agricultural products in the production of alcoholic beverages, and

8. Standards of identity, quality, size and fill of containers for alcoholic beverages.

The administrator, whenever in his judgment such action would be in the public interest, may publish the results of any investigation or study made under the subsection."

We are of the opinion that the national government should not attempt to formulate a comprehensive liquor-control policy. Indeed, considering the ineptitude of Congress in dealing with the subject, we are disposed to say that the less the federal government has to do with matters relating to the social control of liquor the better. It is too far removed from the more important problems that arise in connection with *consumption* of alcoholic beverages. Moreover, the states have taken their stand on liquor regulation and each state system differs in some respects from all the others. With such variation in the attitude of states, the federal government can scarcely determine a policy that would be appropriate for the Union. If a stringent federal policy were adopted it would be out of keeping with that of a state dealing liberally with liquor selling; and if a liberal one were adopted, with that of a strict state. And a middle-of-the-road policy would be of no particular value to any.

It has been suggested by some persons that Congress set up a national wholesale liquor monopoly. Others advocate the establishment of regulations, uniform for the nation, governing retail sale of liquor. These proposals, we believe, are not soundly conceived, in that they would interfere with the states in their handling of the problem. The states assume the real burden of meeting the social hazards that accompany the use of intoxicating liquor. It is for them to determine the kind of controls that shall be exercised. Moreover, the matter of state responsibility has now presumably been settled definitely by Constitutional amendment.

Chapter Three

STATE LICENSING SYSTEMS

THE problem of controlling the traffic in intoxicating liquors belongs to the states. It is their responsibility to render tolerable, if not entirely harmless, the newly restored commerce in these potentially dangerous commodities. The exceptionally difficult nature of this responsibility, generally conceded, was brought home forcefully to the legislators faced with the task of formulating liquor laws. The difficulty lay in the need for reconciling two conflicting but equally desirable ends: the limitation of the liquor traffic within the narrowest bounds because of the proven danger inherent in the use of alcohol, and the avoidance of too great restriction which would make for law violation. It was natural that the latter end should appear as the more important of the two, not only to the legislators, but to the nation as a whole. Lawbreaking was the more recent accompaniment of the use of liquor and therefore it appeared the more alarming. One thing, at any rate, had been learned thoroughly: excessive restriction is self-defeating. This circumstance might logically have served to produce lax liquor laws; that actually the opposite came about is attributable to the one important fact that legislators and populace alike recognized that lax control laws and a lax attitude generally toward the use of liquor are the basic causes of prohibition legislation and, indirectly, of lawlessness. The more important goal, therefore, was not a guarantee against evils germane to prohibition, but rather guarantees against the recurrence of conditions unquestionably responsible for prohibition. The primary objective of legislation was to impose restraints upon the use of liquor.

Types of Control

In applying the principle of restraint, the states, except those that had elected to prohibit the traffic in liquor altogether, were divided into two groups characterized by the degree of severity in the restraining device adopted. One of the groups, the larger of the two, contented itself with placing restrictions on private trade; the other, comprising what might be regarded as the "drier" units within the wet group, went further: it instituted systems of state operation.

Dry States

Alabama	Georgia	Kansas
Mississippi	North Carolina[1]	Oklahoma
Tennessee	North Dakota	

Wet States with Private Sale

Arizona	Arkansas	California
Colorado	Connecticut	Delaware
Florida	Illinois	Indiana
Kentucky	Louisiana	Maryland
Massachusetts	Minnesota	Missouri
Nebraska	Nevada	New Jersey
New Mexico	New York	Rhode Island
South Carolina	South Dakota	Texas
Wisconsin		

Wet States with State Sale

Idaho	Iowa	Maine
Michigan	Montana	New Hampshire
Ohio	Oregon	Pennsylvania
Utah	Vermont	Virginia
Washington	West Virginia	Wyoming

The above classification of states—dry, wet with state sale, and wet with private sale—is both superficial and also only relatively accurate. The factor which accounts for the

[1] North Carolina has a state dry law, but 18 counties and 2 cities are exempted from its provisions and may set up county liquor stores.

partial inaccuracy is the presence in practically every state in each of the three groups of a certain amount of private trade. The dry states, with the exceptions of Alabama and Kansas, where every kind of alcoholic beverage is banned,[2] have legalized the manufacture and sale of beer, which in each instance are in the hands of private dealers. To be sure, the beer in question is a light, so-called "nonintoxicating" beer, but the system of control is not unlike that used by wet states to regulate the sale of intoxicating liquors of high alcoholic content. Thus, in all but two dry states the sale of beer by private concerns is legal—not only the popularly known "3.2" beer in Mississippi, North Dakota, and Oklahoma,[3] but considerably stronger beers in Tennessee and Georgia.[4] With the exception of a negligible amount of state operation in bottling and blending in Washington and Oregon, the monopoly states resemble all other wet states in that all production is in private hands. Three of the monopoly states—Oregon, Virginia, and Washington—limit private sale to beer and wine; but seven others—Maine, Michigan, New Hampshire, Ohio, Pennsylvania, Vermont, and Wyoming—permit the sale of all alcoholic beverages, including spirits, by private dealers. In these states, state operation relates to the retail sale of spirits in unopened packages to be consumed away from the premises, while private operation consists in the sale of every type of bev-

[2] Alabama prohibits the sale of even the lightest, the so-called "3.2" beer. A referendum in February, 1935, resulted in a vote against the sale of beer and the supremacy of the dry law was thus reaffirmed. The Kansas dry law is just as thoroughgoing in its intent to prohibit the sale of even the lightest of alcoholic beverages as Alabama's. Here, however, the legal definition of a "lawful beverage" as that which is "nonintoxicating in fact" creates a hiatus in the system. Such a definition is clearly indefinite, especially in its reference to 3.2 per cent beer. The ruling of the Kansas Supreme Court to the effect that 3.2 per cent beer must be shown to be "intoxicating in fact" to be outlawed, resulted in a wide-scale and relatively open sale of that beverage throughout the state.

[3] 3.2 per cent of alcohol by weight.

[4] The upper limit of the alcoholic content in Tennessee is 5 per cent by weight; in Georgia, 6 per cent by volume. The sale of wine is also legal in Georgia.

erage by hotels, clubs, and restaurants for consumption on the premises.[5] In many large cities in this group the establishments serving whiskies, brandies, beers, and wines by the drink far outnumber the state stores dealing in bottled spirits.

The above considerations force the conclusion that the popular form of post-repeal liquor control is state regulation of private trade. This fact, however, does not detract from the importance of the state monopoly experiment; on the contrary, even if the experiment were a great deal less extensive than it is, its importance as a new governmental venture would still be unquestioned. Taken by itself, away from the contrast which the more extensive systems of private trade present, the monopoly type of liquor control is an impressive phenomenon in the realm of government. The subject of state monopoly, however, will be treated in later chapters. The present discussion has to deal with the control of private trade of liquor in every state where such trade exists at all, but especially in those twenty-five states where such an arrangement is the exclusive system of control, in the so-called "license states."

The Nature of the License

Private traffic in liquor is regulated through a system of permissive instruments known as licenses. It is through these instruments alone that the activities of individual and corporate traders in liquor are rendered lawful; without them neither production nor sale by such agencies would be legally possible. The control of the private liquor trade is so closely identified with the licensing arrangement that it is generally called the licensing system.[6]

[5] In Maine and New Hampshire the privilege is limited to hotels and clubs.

[6] At least one or two other types of control patterns were in existence in former years, the popularly known "mulct law" furnishing perhaps the most conspicuous example. Under this law, which was in operation both in Ohio and in Iowa toward the close of the nineteenth century, the trade in alcoholic liquor was taxed after it was already in existence; the entre-

What is a license, and how does it operate? In simplest terms, it is a formal permission to carry on a particular business, and it is procurable only before the business is established. The permissive character of the license is suggested by its alternative denotation, "permit"; indeed, the two terms, "license" and "permit," are used interchangeably. The license is always granted upon application to and fulfillment of the requirements of the authorities, and it is usually granted for a consideration, the license fee.[7] Invariably also, the restrictions within which the specific set of privileges conferred by the license may be exercised are set forth in the license and are part of its essence. But the license in the last analysis is a device of restraint and not a grant of freedom. A license in reference to the liquor traffic is simply a grant of privilege to engage in a specific phase of the liquor business in compliance with all the requirements of law and of the licensing authority; it is, in short, that instrumentality without which the business in question would be illegal.

In common usage the word "license" pertains either to the permission itself or to the document embodying the permission. The holder's exclusive right to possess the docu-

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preneur did not seek permission to establish his business but himself assumed complete responsibility in undertaking it. Perhaps it should be explained that at the time of enactment, the constitution of both states prohibited the traffic in liquor, and that it was entirely for the purpose of deriving revenue from the extensive prevailing illicit liquor traffic that the law was adopted. The mulct law was a device to place a tax on those persons who were violating the prohibition law. Its adoption, however, did not constitute a repeal of the latter law; on the contrary, prohibition continued in force, and the liquor seller simply procured exemption from its operation through the payment of a fee or liquor tax. The exemption was understood to be neither a legalization of the liquor traffic nor a license; it was nothing other than the suspension of penalties imposed under the existing prohibition law. However much of the private trade under that system may have resembled the private trade of today, certainly the tax which legalized it bears no resemblance to the license of our present-day liquor systems.

[7] In several states a few licenses, chief among them the license to manufacture wine for personal consumption, are granted gratis.

ment suggests a proprietary relationship to it. The license, however, is never a property right in the constitutional sense; the exercise of its privileges is continuously contingent not only on the holder's compliance with required conditions, but also on the general discretion of the licensing authority based on considerations of the public good. Failure to comply justifies, indeed compels, forfeiture of the permission, but even in the face of perfect compliance no guarantee exists against nullification. A license is always issued subject to termination, its scope limited by the same legislative act which gave it existence, or, in the words of an Ohio supreme court justice, "the reservation of the power of termination enters into and becomes a part of the grant of permission to carry on the specific business," and, "if the permit is terminated in a lawful manner under the provisions of the act creating it, the licensee cannot complain as his license to operate was issued to him subject to that contingency."[8]

Similarly, the license is not a contract. Neither the consideration, that is, the license fee, nor compliance with the terms under which the license is granted are guarantees against cancellation. For example, new legislation may result in a cancellation of the license even though the holder has not been at fault in any particular. Thus, a Pennsylvania court ruled that legislative annulment of a license is not improper inasmuch as "a license to sell liquor is not a contract," and "the person to whom it is issued is not within the protection of any constitutional guarantees."[9] In short, the law seems well settled that the license involves no meanings beyond that of the simple grant, that it constitutes a mere permission to engage in the liquor business which may be revoked at any time in the prescribed legal manner.

[8] State ex rel, Zugraves v. O'Brien et al., Ohio Supreme Court, June 19, 1935, Ohio St. 23.

[9] Bosnjack vs. Grosscup, et al., Pennsylvania Court of Common Pleas, Dauphin County, Dec. 12, 1935.

Centralization of Authority

Public licensing of private trade is the traditional American method of liquor control. Before prohibition the responsibility of licensing and regulating the liquor trade rested with local authorities, such as municipal councils, license boards, police commissioners, judges, municipal chief executives, and, less frequently, local bodies appointed expressly for that purpose. That these officials were too exposed to political influence to be effective administrators is a fact universally recognized. To avoid a recurrence of undesirable conditions the old policy of entrusting local agencies with the power to license and control the activities of licensees was abandoned in the new liquor-control systems. In its stead the policy of charging a central state agency with the responsibility of administering the liquor laws was substituted.

The principle of centralized control is embodied universally in the state-monopoly liquor laws. In the original draft of the laws of license states the principle of central control was also introduced, but invariably concessions had to be made to local home-rule sentiment.[10] The degree and manner of local participation in the regulation of private trade varies from state to state and constitutes one of the most interesting of present-day liquor problems.

Exclusive State Rule

In the four states of California, Connecticut, Delaware, and South Carolina, provision is made for exclusive state

[10] The one or two instances where the idea of state control was almost completely abandoned were Nevada, and to a lesser degree, Maryland. These two states are experimenting once more with what is virtually unqualified local control. The system in Nevada as first adopted contained no provisions whatsoever for control applied to the state as a whole. The law was simply an enabling act empowering the various counties to assume control. In May 1935, the law was amended to include state taxes and license fees on the wholesale and import trade. In spite of the amendment, the Nevada law remains the oustanding home-rule act. In Maryland, where local control is traditional, the state program provides for innumerable local variations in the details of administration, including as the most important elective feature a system of county-operated dispensaries.

rule.[11] Every detail of the liquor-control act is administered by the state liquor authority and no additional control is exercised by the counties or municipalities. Thus in Delaware the state liquor authority is given the power to establish "an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, . . ."[12] while the exclusive character of state control in California is brought out with particular emphasis by the rule denying local governments the right to promulgate liquor ordinances of which the sole object is execution of state law, and even when conformity with state requirements is indisputable. Likewise, in all other states of this group the state's sovereignty in liquor control is absolute.

Local Participation

In eighteen states the chief responsibility is placed upon a central licensing authority but arrangements are made for local participation.[13] Although the main feature in all these states is strong state control operating in conjunction with substantial local control, the mode of combination is a matter of wide variation. In some instances the local authorities have a direct share in the administrative duties, while in others the local authority occupies a purely advisory relationship. The New York State Liquor Authority, though exercising a full measure of control, is advised by county boards. The law provides in complete detail for the establishment of special county boards, defining explicitly the manner in which the board members are to be appointed, the number of members, their qualifications, tenure of office, compensation, and so on. In most states, the municipal councils, the county boards of supervisors or municipal ex-

[11] For further details see Appendix IV.

[12] Laws 1933 (Vol. 38), Chap. 18, Sec. 5 (2).

[13] Arizona, Arkansas, Colorado, Florida, Indiana, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Rhode Island, South Dakota, Texas, and Wisconsin.

ecutive officers are charged with definite responsibilities in administering the license system. The elaborate statutory provisions for the New York county boards take on an aspect of incongruity when viewed in relation to the simple functions they are required to perform. They have only two really important duties: first, to make preliminary investigations of and recommendations concerning license applicants and license holders preceding action by the state liquor authority in the issuance and revocation of licenses; and second, to fix the closing hours of liquor dealers in the various towns, cities, and villages of the state. Under the New York arrangement, although the special county boards review all applications, the state licensing board grants all licenses. This latter board also has power over all other matters of importance. Similarly in Indiana and South Dakota local administration is purely advisory.

In New Jersey the share in administration by local boards is more significant. The entire retail licensing is entrusted to them, including receipt of applications for licenses, investigation of applicants, and issuance of licenses in accordance with their own discretion. The local units have power also to revoke for cause any licenses they have granted, to limit the number of the licenses per population unit, and to determine the size of the various license fees. Without question the above list of functions constitutes an impressive administrative domain, a fact fully appreciated by the New Jersey municipalities. The remarkable point about the New Jersey system, however, is that although a large part of the administrative responsibility has been entrusted to the municipalities, the preeminence of the state's authority is unimpaired. In spite of extensive local self-government, liquor control in New Jersey is essentially a state-administered affair. The state authority assumes the role of referee in all disputes relative to local licensing, and there is state supervision over each administrative function. For example, although the local authorities grant the retail licenses, appeals from the action of local authorities are

open to the state liquor-control department. Moreover, the department may revoke or suspend for cause, not only the licenses that it grants, but also any licenses granted by local authorities. Again, local regulations are ineffective until approved by the state authority.

The license systems of Massachusetts, Minnesota, Nebraska, New Mexico, and Rhode Island are based on the same broad principles. In Massachusetts and New Mexico an important variation is that local boards may grant retail licenses only after investigation and approval of applicants by the state board, a provision which clearly keeps the preponderance of power with the latter administrative body. The systems of Arizona, Arkansas, Florida, and Louisiana furnish further diversities by providing that licenses issued by local authorities are merely additional to those granted by state authorities and that participation of local governments in control is restricted to this one function.[14] Additional local licenses are issued also in Colorado, but here the state authority may grant its license only after the approval of the local licensing authorities has been obtained.

With the comparatively limited powers the localities enjoy in all of these states, local political favoritism and other undesirable local conditions are greatly reduced. Indeed, when the state's supremacy is thus assured, greater latitude in the details of regulation may be granted with safety to local agencies. Thus, local authorities in Massachusetts may depart from the state-wide standard of regulating the sale of liquor by the drink in the following important respects: first, they may issue orders to permit retailers to sell on state or municipal election days, a privilege denied by statute unless such permission is granted; and second, they may grant restaurant licenses authorizing sale seven days a week, at their own discretion, or for week-

[14] The provision does not apply to wholesale licenses in Arizona. In Arkansas the municipalities may further license the liquor traffic, with the exception of the traffic in wine.

days only, provided the prohibited Sunday sales at bars is observed.

Local Control

Illinois stands out in sharp contrast in that although the law provides a somewhat similar combination of state and local control, it is so designed that the local control is really decisive. The state created a three-member board to administer the state liquor law in cooperation with municipal authorities which control the retail traffic. The issuance of local retail licenses, however, is not an exclusive local privilege; actually, the law provides for a twofold licensing of retailers. On the surface the Illinois system of divided responsibility seems to resemble other systems: local administration appears to be subordinated to central control. This appearance, however, is misleading. Adroit amendments to the bill before its passage transformed what was originally drawn up as a system of state control into a system of virtual municipal control. Under this liquor law, with local control as the obvious objective, the state commission's power has been curtailed in several subtle but effective ways. In the matter of retail licenses, which is the most important field of licensing activity, the law provides that the local board must grant its own license first, and that the additional state license may be granted only after the former has been issued. But issuance of a local license automatically requires that a state license be granted.[15] Thus the investigation and approval of applicants is entirely in the hands of local boards without the state board having power to interfere in any way, or even to refuse its own license. Moreover, the state board may not revoke a local license. It may, theoretically, revoke the state license which it was obliged to grant.

When, however, the law contains a limitation, as the Illinois law does, that no member or agent of the state

[15] Article III, Sec. 13 of the Illinois Liquor Law provides that "when a person has obtained a local license and has made application to the State Commission . . . it shall be the duty of the State Commission to direct the Department of Finance to issue a retailer's license to him."

liquor commission may enter the premises of any retail licensee for any other purpose than ascertaining the fact that the licensee in question possesses the required state retailer's license, the effectiveness of the revoking power is clearly annulled. If the proprietor of the licensed premises does not possess the proper state license, the state commission may assert itself by directing that the license be obtained. On the other hand, the commission cannot of its own motion revoke a license for cause, *i.e.*, for violation of any provision of the law, as it is forbidden by law to enter any premises to determine whether such provisions are in fact being violated. "What good is it to enter liquor joints," one inspector complained, "when you have to shut your eyes to the unlawful things that go on?" The legal legerdemain on which the apparent authority granted to the state board is based surpasses in artfulness the best efforts of any Greek sophist. All these concessions to local-control agencies were politically necessary if the state board was to exist at all. Governmental boards are vitalized by powers conferred by law. The Illinois liquor board continues in power for the paradoxical reason that it has no power.

The Nature of the Central Authority

The Special Liquor Authority

Centralization was not the sole objective of legislation on post-repeal liquor administration. Another important consideration was the definition of the central authority. The original proposals favored the creation of specially appointed liquor authorities as against the plan of delegating the task to existing state agencies. The underlying theory was not only that the state would prove the more effective seat of control, but that in addition a specially created state body with no other official duties would constitute the best agency to be charged with this responsibility. Although widely advocated, this principle was not adopted by the license states as extensively as might have been expected. Only fourteen of them have separate liquor authorities:

Connecticut, Delaware, Florida, Illinois, Indiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, South Dakota, and Texas. These liquor authorities are separate governmental agencies, but they do not constitute state departments except in Florida and New Jersey. This fact does not lessen their independence.[16] Even in Indiana and New York, where the liquor authority constitutes a divisional unit in the state's executive department, the liquor authority's status as an independent functional entity is unimpaired.

In ten license states the liquor traffic is under control of state fiscal agencies—state tax agencies in Arizona, Arkansas, California, Kentucky, Nevada, Rhode Island, and South Carolina; the state supervisor of public accounts in Louisiana; the state comptroller in Maryland; and the state treasury department in Wisconsin. Colorado is exceptional in entrusting the task to the secretary of state. In all these states liquor control forms one unit in a department with other functions. This is true even in Rhode Island where liquor control is set apart in the tax department as a separate division under specially designated executive officers.

The systems which delegate the task of liquor control to existing departments do not appear to be satisfactory. In the first place, the matter of administering the liquor law often receives only incomplete attention and consideration from a department whose primary function is something else and which may even be hostile to assuming new duties. Neither a treasurer nor a tax commissioner, for example, has opportunity to do more than issue licenses applied for. Under such a system all details connected with liquor control tend to be delegated to subordinates. A state official with other important duties rarely if ever has time to supervise the investigation of applicants, familiarize himself with local conditions and requirements, work out a scheme of cooperation with local enforcement agencies, or make a

[16] The liquor authority of Missouri is independent of other state departments but it is directly under the supervision of the governor.

study of local sentiment with a view to recommending modifications in the law, all of these being activities essential to the successful working of the license plan. Indeed, a number of such officials have stated that a task as vast as liquor control requires a special administrative agency, and that it cannot be performed with any degree of efficiency by a state department already overburdened with other duties. One administrator revealed this point of view unhesitatingly when he exclaimed: "The task should *never* have been wished off on *us*!"

It is understandable why so many states chose the tax department for the role of liquor administrator. One important part of liquor control in any state is to collect the liquor excise, and in states where local governments are the primary control agencies such collection becomes the major function of state liquor control. Consequently, the tax department is the logical authority in home-rule states. With the exception of California, in all the states where tax or other fiscal agencies are charged with the task of controlling the liquor traffic, local units are the primary licensing agencies. Liquor control as a state function, as far as these states are concerned, amounts to liquor tax collection. While in a sense practical, such an arrangement has its difficulties. Since the main responsibility of fiscal agencies is revenue, it is only logical that their interest should be focused on revenue, rather than on social control. The force of this argument was demonstrated in many instances. Revenue officials issued licenses in numbers far in excess of the needs or desires of any community within the state. The special liquor administrator within the revenue department may, however, as in Rhode Island, be sufficiently removed from the general departmental influence to possess a non-revenue point of view.

Board vs. Single Commissioner

The multi-member board is the popular form of state liquor authority among the license states which possess spe-

cial liquor-control administrations. Of the fourteen states with such special authorities, only Delaware, Minnesota, Missouri, and New Jersey have single-member agencies.[17] It is too early to say which form of administration is superior, but such evidence as we have indicates that there is not much difference either way; the quality of administration depends more upon the individuals in office. Certain single-member authorities are among the best, and they are doing particularly well the functions we usually think of as being best handled by a board, as for example, the determination of policy and hearing of appeals. It may be that as time goes on, the board members will be found to contribute other items to the administration and to reflect new points of view, particularly an interest in social activities, such as gathering evidence on the drinking habits of the nation and developing temperance education. Indeed, a small beginning in this direction has already been undertaken in New York where one of the five Alcohol Beverage Control Board members managed to find time during the winter of 1935 to compile in pamphlet form extracts from the more important recent authoritative statements relating to the use of alcohol and its effects on the human organism.[18]

Selection of Administrators

Of even greater importance than the outward aspect of the governing agency is the nature of the human element which composes it. In the end the intelligence and integrity of the administrators constitute the important factors in the quality of administration. In recognition of this fact all of the liquor laws provide devices to guard against the designation of persons of improper qualifications for these important positions.

The most frequent primary provision is that board membership shall be appointive rather than elective. Even with the allowance that must be made for favoritism by unscrupu-

[17] In Delaware, Minnesota, and New Jersey the liquor authority has the title of liquor commissioner; in Missouri, supervisor of liquor control.

[18] "The Effects of Alcohol on the Individual and the Community."

lous governors, the system of appointment is unfailingly better than election. A staff member under one of the elective boards, writing confidentially to a friend in the summer of 1934, said:

> One-third of the employees in this department could do the work much better than it is being done, but more employees are being added and probably will be until after the election. Some of the spare time is consumed in writing campaign letters for board members who are seeking reelection. The stenographers have been typing form letters for weeks, and we are expected in addition to write from fifty to one hundred personal letters to our friends. These letters are to be brought in and counted by the boss. It is reported that in a certain district all employees have been assessed from $50 to $100 for campaign expenses.

Actually, in the license states, with the exception of administrators who serve in an ex-officio capacity, no liquor officials are at the present time elected by popular vote. With the sole exception of New Jersey, where the legislature designated the state liquor commissioner by statute, the governor, in some cases with the consent of the Senate, appoints the administrators.

Another method designed to procure able and efficient administrators is that of enhancing the value of the office by lending it security and dignity through long terms and adequate compensation. All the state laws provide terms of office of at least three years, generally longer. These long-term provisions have the desired effect, but the salary provisions, because inadequate, frequently do not. Salaries, intended to attract personnel of the same general excellence, vary all the way from $4,000 in Nebraska to $16,500 in New Jersey.[19]

Liquor Control Staffs

In some instances where the state's share in liquor control is comparatively small, few assistants are needed. Thus

[19] See page 118 for tables dealing with salaries and terms of office of liquor administrators.

the service of six employees was adequate for the task in Arkansas during 1935, and of only two in Nevada during the same period. The state liquor department of California furnishes a strong contrast. Here, where the entire job of licensing is handled by a state agency, the number of employees was 475. The following table gives the number of state employees and the number of licenses in force in several license states at the end of 1935.

TABLE I

STAFFS AND LICENSES, 1935

State	Number of Licenses	Number of State Employees
Arizona	2,532	15
Arkansas	3,371	6
California	73,189	475
Connecticut	6,280	53
Delaware	457	29
Maryland	108[a]	14
Massachusetts	6,609	42
Nevada	100[a]	2
New Jersey	20,231	256
New Mexico	857	6
New York	59,296	229
North Dakota	1,959	30
Rhode Island	2,309	40
South Carolina	3,858	8
Wisconsin	3,676[a]	93

[a] Exclusive of retail licenses.

In all the states the liquor authority is empowered to appoint the necessary employees, although the stipulation is made in some states, as for example in Missouri and Nebraska, that the appointments must be approved by the governor. In Massachusetts the approval of the executive council as well as of the governor is necessary, while in Colorado the executive council alone must approve them. Still other variations of this character exist. In Connecticut, all appointments made by the liquor board are subject to the approval of the board of finance and control, while in California the liquor law empowers the state board of equalization to employ such inspectors and clerks as the state

personnel board may determine are necessary for the efficient administration and enforcement of the provisions of the liquor act. In Minnesota the commissioner has power to appoint assistants, including inspectors, but only up to ten in number; moreover, the law of this state provides that all employees appointed by the liquor commissioner may be removed by the governor. In Florida the governor appoints the supervisors, up to twenty-four in number, who, together with the governor and the liquor-control director, constitute the enforcement division of the liquor-control department.

In seven states the employees of the liquor authority come within the general provisions of the state civil-service law, except to the extent that they are specifically exempted.[20] These exemptions, however, differ from state to state. Inspectors, investigators, and legal assistants, as well as assistants of still higher rank, such as counsel, deputy commissioner, and specialist, are not generally required to qualify by means of examinations. It is interesting to note that inspectors are included in the competitive class in New York State but not in New Jersey. The California liquor law exempts from the provisions of the state civil-service act all clerks and inspectors employed by the state board of equalization for the purposes of liquor-law administration and enforcement.

The salaries of subordinates in liquor departments correspond to those of governmental employees of similar character in other departments. Indeed, some of the liquor laws expressly state that although the liquor authorities may fix the salaries of liquor-control employees, they are not to be greater than those of employees in other state departments doing similar work.[21] In some instances, as in Nebraska, although the liquor authority fixes the pay of subordinates, the approval of the governor is requisite; in others, as in New

[20] Colorado, Illinois, Maryland, Massachusetts, New Jersey, New York, and Wisconsin.

[21] *E.g.*, Missouri, Texas, and others.

Jersey, the approval of the department of finance must be secured before the salary is valid.

The Scope of Control in Reference to the Various Beverages

The usual arrangement among the license states is to place the control of all the alcoholic beverages under the same authority. Although in many instances, as will be seen in a later section, separate and usually more liberal licensing arrangements are provided for the beer traffic,[22] its supervision is entrusted to the same official who has charge of the traffic in wines and spirits. The arrangements in Minnesota and Texas are exceptions to this rule. No state official shares in the control of beer in Minnesota; this branch of the alcoholic-beverage industry is licensed entirely by the municipalities. In Texas, on the other hand, although the beer licenses are issued by the county tax collectors, their supervision after issuance is entrusted to the state liquor board.[23]

Special Control Devices and Features

The outstanding source of pre-prohibition liquor ills was the saloon. The subject of the saloon and its degrading influence has been too thoroughly discussed to necessitate further comment here; for our purposes it will suffice to say that the saloon had a bad reputation for many years, that it was largely responsible for the prohibitory legislation, both state and federal, which prevailed in our country at different times, and that prevention of its return was a major concern of many persons interested in the repeal of national prohibition. The determination to prevent the saloon from making a post-repeal appearance expressed itself partly in the form of legislative safeguards included in the liquor laws. Although the pre-prohibition licensing arrangements form the basis of the new liquor legislation, in most of the states where this form of control was readopted

[22] The word "beer," wherever used in this section, refers to light, the so-called 3.2 per cent beer.

[23] For further details see Appendix IV.

significant innovations have been initiated. Most outstanding of these is the separation of sales for on-premises and off-premises consumption. And there are also separate licenses for different kinds of beverages. Formerly the saloon license provided for the off-sale and on-sale of all kinds of beverages.

The new arrangement is not without precedent. Pennsylvania's "Brooks Law" in 1888 provided for various types of retail licenses. Grocers were licensed to sell package liquor and food-serving establishments were permitted to sell liquor for on-premises consumption. Similarly in Massachusetts and New York there was a different kind of license for each kind of retail sale. These instances, however, were exceptional and did not represent a well-defined theory of control. The modern classifications, on the other hand, are expressions of very clearly apprehended aims, which have been devised to eliminate the saloon by dividing its privileges among several independent enterprises. The basic division is between sale by the package and sale by the glass for immediate consumption. This comparatively new departure is conspicuous by its extensive application; it is a frequently recurring feature among the license systems as well as one of the distinctive features of the monopoly system. With but a few exceptions, establishments licensed to sell liquors at counters or tables for on-premises consumption are not permitted to engage in package retail.[24] For each type of sale a separate license must be obtained, and each license refers to a separate retail establishment.

While all the old experiments in separating the branches

[24] Package sale of liquor is permitted by on-sale licensees in Arizona, California, Indiana, Maryland, Missouri, Nebraska, New Jersey and Wyoming. (Wyoming operates under a wholesale monopoly but the retail sale of all alcoholic beverages is under a system of private licensing.) The Illinois law does not separate the on-sale and off-sale functions. Here the local governing bodies are empowered to determine the class of licenses issued. In most cases the two types of retail sale are separated. Both types of sale are permitted under the same license also in Minnesota but only in the smaller villages. In New Mexico a dispenser's license permits both types of sale but in different rooms.

of retail sales provided for the licensing of drug, grocery, or other merchandising stores to sell liquor by the package, many of the present systems provide for the licensing of exclusively liquor stores. The exclusive package liquor store is a repeal invention resembling in some respects the state-owned stores of Canada and of the monopoly states in this country. It is not a universal institution, inasmuch as the old arrangement of sale by drug, grocery, and general merchandising stores is still the most popular among the license states.[25] The intent of the new arrangement was to foster home consumption in preference to public consumption by making the purchase of liquor in the original package possible outside of drinking establishments.

Prohibition of On-sales

Arrangements, even more striking, have been initiated in connection with the sale of intoxicants for on-premises consumption. In this field the determination to render impossible a return of the saloon is displayed more forcefully and in a greater variety of ways. Establishments licensed to serve intoxicating liquors by the drink are not only prohibited from making package sales, but are also subjected to various other restrictions.

The most drastic restriction is the prohibition of on-sales of spirituous liquor altogether. This was tried out in California, Colorado, Connecticut, and Indiana during the first year of repeal. The experiment, however, did not prove successful. The restriction proved too strict to be compatible with the general idea of the license plan. In all these states while the law was in effect, this feature was the one most extensively violated; everywhere establishments licensed to sell beer and wine only, as well as those not licensed at all, sold spirituous beverages for on-premises consumption to

[25] New York and South Carolina permit the sale of liquor by the package in special liquor stores; Florida permits such sale in special liquor stores and hotels; while Colorado, Connecticut, and Indiana permit it in special liquor stores and drug stores.

an extent which made other violations appear insignificant. So inevitable did such violation of the law appear that little effort was made to interfere—the utmost the police expected was that the liquor thus dispensed bear a tax. Although this general condition prevailed in all four states, the most acute situation arose in California. So completely was the unacceptability of the measure demonstrated here that even the control board was forced to cooperate in its circumvention. It sanctioned the sale of bottled cocktails, for example, on the theory that dilution to a low alcoholic content brought them within the permitted vinous beverage classification. Under such illogical conditions the speedy annulment of the restriction was inevitable, and indeed, by November, 1935, this strict ruling was rejected. It was rejected by the other three states as well after but one year of operation.

This did not, however, prevent Arkansas, South Carolina, and Texas from experimenting with the prohibition of on-sales.[26] All these states are in the South where the prohibition sentiment is strongest. It is possible that they will achieve greater success, but judging from the fact that law violations were frequent in all of them during prohibition, it is more likely that they will encounter similar difficulties, if not everywhere, at least in the larger cities.

Restrictions of Sales to Hotels and Restaurants

Though in license states the prohibition of public drinking of hard liquor has not proved workable, other novel arrangements in on-premises selling practices have been successful. The restriction of public drinking to restaurants and other places where the primary business is the sale of food is the most universal as well as the most striking of these novelties. In contrast to the saloon system of earlier days and the prohibition of sales for on-premises consumption in the states just referred to, the large majority of states are permitting

[26] Kentucky also prohibits on-sales of spirituous beverages. Exception is made for the sale of spirits for consumption on the premises of licensed establishments when such beverages are served in two-ounce containers.

the sale and consumption of alcoholic beverages in restaurants, clubs, and hotels.[27] Only nine states license premises which are essentially similar to the old saloon.[28] In all the others, sale by the glass is confined to bona fide food-serving establishments. This restriction, although not without its attendant difficulties, as will be seen later, was nevertheless on the whole happily conceived. One or two desirable results have followed from it. To begin with, in restaurants, clubs, and hotels of most states, patrons although not required by law, tend to consume alcoholic beverages in conjunction with food to a far greater extent than in the so-called taverns where no food can be obtained.[29] That this tendency is advantageous is a theory well supported by scientific authority,[30] and by common sense and observation as well. This is the most desirable arrangement, moreover, by which to eliminate the characteristic appearance of the barroom or tippling house. A bona fide restaurant is much more likely to be a wholesome type of place than one devoted wholly to the sale of intoxicants by the drink. The latter type of establishment, or tavern as it has come to be known, is a heavy contributor in many states to the so-called liquor evils. The following excerpts from a report on Chicago taverns made by the Juvenile Protective Association in 1935 describe some of the most vicious of these evils:[31]

[27] Fourteen out of twenty-one, and the District of Columbia. This arrangement is also not without precedent. The "Brooks Law" of Pennsylvania embodied the principle. Under it, Pennsylvania, outside of Philadelphia, licensed only inns and restaurants to sell intoxicants for consumption on the premises. Also, in Massachusetts the license law of 1874 prohibited the licensee from keeping a public bar and required that he "hold a license as an innholder or common victualler." A similar requirement applying to Sunday sales is found in the New York Liquor Law of 1892, popularly known as the "Raines Law."

[28] They are usually designated as "taverns." The states are: Illinois, Louisiana, Maryland, Massachusetts, Missouri, Nebraska, New Jersey, Rhode Island, and Wyoming.

[29] It is a legal requirement in Colorado. It is a requirement also in Illinois but here it applies only to restaurants. In Oregon the same requirement applies to wine.

[30] Yandell Henderson, *A New Deal in Liquor.*

[31] "The Return of the Saloon," Feb. 1, 1935.

> No provision of the law is more disregarded than the Article banning the sale of intoxicating liquors to drunken patrons.[32]

> Vice in Chicago's saloon-taverns flourished. Some saloons are simply houses of prostitution, having adjacent rooms used for vice; hostesses solicited at the bars and tables, thence repairing to connecting quarters with the patrons. In other cases streetwalkers came into the saloons to solicit. . . . Cab drivers routed their fares from the liquor resorts to the houses of ill-fame.[33]

> Repeated instances of children in saloons came to our notice. . . . Boys and girls under age were patrons of these places. . . . Many followed regular routes from saloon to saloon during late hours of the night. Children in liquor resorts watched prostitutes openly offering themselves to men, and witnessed appalling scenes of intoxication and debauchery. They were familiar with, and impressed by the suggestive entertainment provided in such places.[34]

The principle of the on-premises sales in restaurants, however, as has been mentioned, is not without its drawbacks. There is always the danger that the liquor sales will eclipse the restaurant part of the business so that the maintenance of a restaurant will be little more than fictitious compliance with law. In New York, to cite only a single example, there are scores of licensed premises which by no stretch of imagination could be called bona fide restaurants.

Beer Selling

Another innovation in on-premises sales arrangements is the separate and more liberal licensing of beer. The purpose of this is to promote temperance. The liberality is based on the recognition of the relatively greater danger inherent in the use of spirits and other liquors of high alcoholic content. In almost all the states where hard liquors may be sold in restaurants and hotels only, and in other states as well, beer may be dispensed freely by establishments licensed

[32] *Ibid.*, p. 5.
[33] *Ibid.*, p. 8.
[34] *Ibid.*, p. 9.

especially for this purpose.[35] In this way the beer tavern and the beer garden came to be. This arrangement, however, has not obtained the same success as the provision for the sale of liquor in meal-serving establishments. If there is one complaint more universal than any other, it is that against the beer tavern. Such taverns are described everywhere as cheap, unattractive, and of evil influence. They are very frequently gathering places for loiterers and law violators of many sorts. There are frequent unauthorized sales of spirituous liquors in beer taverns and little care is taken to avoid sales to minors. Indeed, so obnoxious has the beer tavern become that it has aroused determined opposition. In a few states the abuse of the privilege has provoked agitation for the abolition of the beer tavern altogether. In New York the agitation resulted, during the spring of 1935, in the introduction of a bill in the legislature to repeal the separate beer license. Although the measure did not pass, its significance is apparent; it had been invoked as an antidote against "bootlegging, chiseling, and cheating on the part of beer taverns."[36] Similar proposals have been made in other states.

Advantages of New On-sales Arrangements

At first glance, abolition of the beer-tavern system seems to be the logical remedy for its undoubted failure. We feel convinced, however, that the system is well conceived and that its failure is due more to lax supervision than to any inherent defect. The experiment, moreover, has had too short a trial. It would be regrettable to terminate it before giving it a complete test; our characteristic national disposition to such precipitate action would work great harm. Let us not forget that this restriction and the one confining on-premises sales of spirits to food-dispensing establishments

[35] In New York "eating places" may be licensed to sell beer as distinguished from "restaurants" which may be licensed to sell all liquors.

[36] From a statement by the sponsor of the bill, Assemblyman Burke, New York *Times* of March 2, 1935.

were devised as the best methods to prevent the return of the saloon and the excessive consumption of spirits. They are still the only devices at our disposal, and if abandoned, there will be nothing to prevent the flood of liquor evils whose reappearance they were designed to prevent. Also, it is possible that legislative proposals to do away with the tavern and combine beer and hard-liquor sales are not a true reflection of public attitude. Their origin may very well be due to pressure from interested groups. Furthermore, too many alterations of the law, especially when they are opposed by its administrators, tend to weaken the whole administrative structure.

Screens

One of the saloon's particularly bad features was its seclusiveness. Behind its screens, curtains, and windowless swinging door, disorder and vice flourished in comparative security. The sense of privacy which saloon patrons enjoyed was very often the direct cause of their intemperance and debauchery. The new liquor laws, even in those states where establishments dealing exclusively in liquors are permitted, prohibit the use of all screening devices. While it is true that the view into some of the smaller and cheaper establishments has been effectively obstructed with posters, price lists, plants, and other window decorations, nevertheless, under present liquor-control systems, there is no privacy such as characterized the saloon. This condition has produced two beneficial results. It has made law enforcement easier by providing agents a ready view into the interiors, and it has curtailed the feeling of abandon on the part of patrons which the sense of privacy generates and which so often serves to accentuate if not originate the evil accompaniments of public drinking.

The Bar

The set of restrictions pertaining to the presence and use of the bar far overshadows in importance any other restric-

tions on the retail sale of liquor. In the earlier stages of liquor legislation a general feeling against the return of the bar with its brass rail, free lunch, and all of its traditional appurtenances was clearly manifested. The bar was either prohibited altogether, or else the law required that patrons be served while seated at tables. With the introduction of food counters, service bars, and the like, the exact definition of the word "bar" lost its original meaning, and in this way the bar itself was able to creep back surreptitiously in many places. Counters "over which food is also served" abound throughout Illinois, where the bar as such is prohibited by law. The same is true in Massachusetts, Wisconsin, and many other states. The bar was also at first prohibited in New York, but flagrant violation led to the repeal of this prohibition; the bar was permitted to come back with the understanding that it would not be the "predominant" feature of the licensed meal-serving establishment. As to the manner in which to determine whether a bar is predominant or nonpredominant, the law is discreetly noncommittal, creating thereby an opportunity for interminable debate.

Hours of Sale

Another widely adopted restriction limits the hours during which liquor may be sold. It was hoped that this would constitute a check on immoderate consumption. Severe restrictions on hours of sale, successful under a system of private licensing in England, have failed to attain a like success in this country. Though in many cases the proprietor may wish to comply with the regulations on closing hours, he must be careful not to offend the patron upon whom he depends for a livelihood and who is more concerned with satisfying his own immediate desires than with the letter of the law. In the second place, the difference in hours of closing for the various types of liquor establishments adds to the difficulty of supervision. For example, in Minnesota restaurants and hotels lawfully selling liquor for immediate consumption take advantage of that situation to sell package

liquor unlawfully for four hours after the package stores have closed; and the beer taverns, which enjoy a still later closing hour, continue selling all kinds of alcoholic beverages for an even longer period. Finally, if enforcement is effective the bootleg evil crops up. Thus, on one main thoroughfare in Kansas City, Missouri, when the six licensed dispensaries closed for the night in compliance with the law, four speak-easies were ready to keep the supply continuous.[37] And Kansas City is no exception in this respect; as one police chief in Rhode Island remarked, "Closing hours simply mean locked doors, private backrooms, and bootleggers." It is no wonder that there is a growing tendency throughout the country to regard this restriction as of little value. Some proposals have already been submitted advocating later closing hours, preferably with a view to satisfying public desire. One liquor administrator is ready to leave it to "the willingness of the liquor seller to keep open."[38]

Advertising

One of the chief arguments against the license system is based on its natural adaptability to methods of forced sales. The obvious corrective against stimulation of sales is the restriction of advertising. At the time when the legislative proposals dealing with liquor control were first discussed, tremendous emphasis was placed on the need to prohibit advertising; indeed, most of these proposals, as originally drafted, contained provisions either prohibiting entirely or placing drastic limitations upon liquor advertising. Gradually, however, it was realized that under present conditions such provisions were impractical. The magazines and newspapers with country-wide circulation and the radio with its national hookup rendered any local attempts to prohibit liquor advertising ineffectual. Consequently the advertising

[37] This was true as late as the summer of 1935, as reported by one member of our staff.

[38] Pierre DuPont, radio address, July, 1934.

of liquor is permitted in most states at the present time, but usually only under the supervision of the liquor-control agency. While the requirements of these agencies vary considerably from state to state, they all aim to accomplish at least two important things, namely, to prohibit all false claims relating to liquor, and to prohibit objectionable types of advertising. A common requirement of state liquor-control authorities is that all sign, poster, newspaper, magazine, and radio advertisements of alcoholic beverages conform to the regulations adopted by the Federal Alcohol Administration, except to the extent that they are further restricted by themselves. Other requirements are that the descriptive matter of such advertisements conform exactly with the description printed on the labels of the containers; that they contain no lewd, undignified, or other improper illustrations; that they contain neither subject matter nor illustrations inducing minors or immature persons to drink, or depicting them in the act of drinking alcoholic beverages; and that they do not suggest any beneficial or tonic effect from drinking the beverages advertised. The distribution of advertising novelties, such as beer mats, bottle openers, boxes of matches, and the like, is frequently permitted; and the use of menu cards, bills of fare, glasses, mugs, steins, trays, and napkins containing advertising matter by persons licensed to sell alcoholic beverages at retail, provided that in all instances the advertisements conform to the general regulations governing liquor advertisements. Although it is difficult to measure the extent to which all these types of advertising are instrumental in the promotion of sales, it is safe to assume that their influence is considerable.

Local Option

We have discussed the number of ways in which restrictions have been placed on private trade in the license systems. It remains to consider local option as a special kind of restriction which has been widely adopted. Local option is in reality a form of prohibition which exempts a county, city, or community from the general state liquor law. Tech-

nically, this privilege might be utilized to exempt certain areas from a dry statute, but in practice local option is employed to enact a local prohibition law in an otherwise wet state. Consequently the local option law as administered is welcomed as a weapon by the militant drys, who, defeated in nearly every state of the Union, are seeking opportunities to check liquor selling town by town, city by city, and county by county, with the view of reaching ultimately nation-wide prohibition. Every victory on the question of local liquor sale brings them nearer their goal, and every defeat is to them merely a lull until the next vote. Local option thus serves to keep alive agitation and uncertainty in regard to the status and legitimacy of liquor in a particular community. This is especially true of localities where wet and dry sentiment is nearly even. Thus, where a vote is necessary to resolve the issue, it becomes, on the contrary, a vital factor in prolonging the strife. Communities are constantly torn apart over a social issue in regard to which some element of certainty and continuity would seem to be desirable.

Long Terms

We have pointed out the principal disadvantage of local option; one of its principal advantages is its value as a compromise measure. In states where dry sentiment runs high, as in Kentucky, Texas, Virginia, and Vermont, local option, a safety valve for dry sentiment, has been utilized to secure the passage of wet legislation. The unfavorable features of local option can be lessened by the use of various restrictions. For example, a relatively long interval between elections moderates the attendant wet-dry agitation. Several states have made use of this periodic limitation: in Illinois the interval between votes must be forty-seven months; in Kentucky and Minnesota, three years; in Missouri and New Mexico, four years; and other states have provided like intervals. Another restriction designed to lessen the controversial nature of the voting is the provision that the poll on the liquor question be held at times other than days of

national, state, or local general elections.[39] This provision removes the liquor issue from the highly charged atmosphere surrounding general elections, and dissociates it from problems of a purely political nature.

Varied Local-option Areas

In some states the legislation expresses the view that an advantage inheres in permitting local option to be adopted by areas, be they large or small, that are not necessarily coterminous with subdivisions of government. For example, a system which provides for vote by precincts permits parts of large cities, formerly independent townships, to retain their distinct characters. This was recently demonstrated in an election in Illinois, where a part of the city of Chicago —Austin, once independent—was able to determine its own policy on the liquor question irrespective of the vote of the remainder of the city.[40] Elsewhere, also, attempts have been made to base local-option areas on logical rather than on existing political divisions.[41]

Another restriction highly to be recommended would require a two-thirds vote before a change could be made from wet to dry or dry to wet. This restriction is based on the theory that where public sentiment is apt to be so evenly divided a mere majority is not conclusive enough for a truce lasting several years. None of our states is adventurous enough at the present time to include such a requirement in its liquor laws. The common provision makes a simple majority vote sufficient for determining the law on local sale.

[39] This provision prevails in Arkansas, Florida, Kentucky, Missouri, New Mexico, and Wisconsin. In Massachusetts there is provision for the vote on local option at both general and special elections.

[40] November, 1934.

[41] Arrangements similar to that of Illinois obtain in Arkansas and Kentucky. In Louisiana the vote is taken by municipalities, wards, and parishes. In New Mexico although the voting unit is the county, it is provided that cities of the first class shall constitute voting units separate from the counties in which they are located.

Variety of Questions to Be Voted On

One factor which renders some of the present local-option systems more satisfactory than those of the preprohibition period is the wider choice of subjects submitted at the polls. While most of the states provide only for the old question of whether the sale of liquor is or is not to be permitted within the locality, a few provide for a wider expression of opinion. Thus Massachusetts poses two questions for vote: one, whether the community wishes to permit the sale of spirits; and two, whether it wishes to permit the sale of beer and wine. New Jersey and New York provide for votes on all of the following questions: the sale of stronger liquors, of light beers and wines, of liquor for on-premises consumption, and of liquor by the package. New Jersey includes also in its list an option on Sunday sales. In this way communities may obtain the types of liquor sales that they wish.[42] These choices are of particular value in the license states and in other states where privately owned sales establishments exist. There is not the same need for local option in states with liquor monopolies, for it has been found that where the establishment of package stores rests entirely with the state liquor authority, the wishes of the community are respected. "When a community does not want a liquor store or a liquor agency," said a state monopoly administrator, "we simply don't establish a store or an agency there."

The period since prohibition is too short to permit an evaluation of local option. The pendulum was swinging in favor of repeal and for that reason most of the communities wanted to make a trial of liquor selling to see what would happen. A vote "for" the sale of liquor has therefore been the usual result of local-option elections during these past two years.

[42] Similarly in Illinois, with the general question of "for" or "against" the sale of liquor is included another on beer. In Rhode Island, in addition to the general question of the sale of liquors there is one as to whether saloons (Class "C" licenses) should be permitted in the individual communities.

Chapter Four

DETAILS OF ADMINISTRATION IN THE LICENSE SYSTEMS

LICENSING the liquor traffic is a formidable task. The realization of ends implicit in the various statutory provisions, together with the necessary reconciliation of the divergent interests of the state, the governmental subdivisions, the various trade groups and the consuming public, presents difficulties that appear well-nigh insurmountable. Our present purpose is to examine the more important licensing functions as they are adapted in the several states and to evaluate them in the light of performance.

THE SELECTION OF LICENSEES

The first major task in the administration of the license law is the issuance of the liquor license, which in turn involves such kindred functions as the preparation of application forms, the selection of persons to be granted licenses, the actual issuance of the licenses, and the collection of the fees. Most of these functions are of a purely technical character; only the appraisal of candidates entails processes that are individual and consequently difficult. The importance of this function is obvious. When liquor licenses are placed in the hands of trustworthy and competent persons the likelihood of subsequent liquor troubles is greatly reduced. Benefit should therefore accrue from employing the method, if it can be found, which most definitely insures the selection of none but desirable license holders.

Two processes are involved in determining the propriety of issuing licenses, the investigation of applicants and of the premises for which the licenses are requested, and the ob-

taining of community sentiment toward proposed liquor businesses. Both processes are important and both require the exercise of tact and sound judgment.

Investigation of Applicants

The weight attached to the principle of centralization in liquor control has been noted. The principle's importance is manifest, perhaps to a greater extent than in any other phase of the control activity, in the examination of license applicants. The interpretation of applicants' records affords the most abundant opportunity for dishonest practices. It would be an exaggeration to assert that the integrity of state officials is flawless, but it is at least not untrue to say that state officials are not exposed to temptations connected with the determination of eligibility to as great an extent as officials who depend exclusively upon the local citizenry for political support. On the other hand, the familiarity with local conditions possessed by local officials is an advantage which balances against the benefit of state control. Both types of administration, therefore, possess advantages and disadvantages. An arrangement that combines the merits and eliminates the defects of each would appear the ideal administrative pattern. And indeed, as we have seen, combined state and local administration is the popular form of present-day liquor control. Although such combination of state and local control is common, nevertheless no satisfactory coordination of the two sets of functions in investigating license applicants has been devised; in all the states either the one or the other authority has the ultimate determining power. Under such circumstances dual control loses its proper character; it becomes a system of virtual state or local control, according to the location of the decisive power. Conflicts of opinion concerning the fitness of any given applicant are always resolved through the assumption of superior authority, a method which renders the subordinate influence of doubtful utility. Moreover, repeated experience of subordination to superior authority weakens the

zeal with which subordinate officials perform their tasks, nor does the assertion of prerogative terminate the strife which differing opinions create. And finally, a discordant position among licensing authorities unfailingly creates in the mind of the rejected license seeker a feeling that the justice of the decision is questionable.

The above considerations indicate that in the approval of license applications the possession of unimpeachable supremacy by either liquor-control authority is unsatisfactory. Arrangements granting it to either one harbor potential dangers. Our recommendation would be so to combine the functions of the two administrative agencies that the authority of neither is completely sacrificed. This might be accomplished by arranging that the state authority make the initial investigation of each application, but that before it is finally acted upon by the state authority it be submitted to the proper local official for his recommendation. In addition, the arrangement requires that if after separate investigations either authority is found to disapprove of any given application the issuance of the license should be automatically prevented. Such a system would accomplish several important things. The initial state investigation would provide uniform standards. The dual veto power would eliminate all applicants known to be undesirable, for if any reason for denying a license is known to either licensing authority, it will not be issued. And finally, the arrangement preserves the balance of power by preventing the local authority from becoming an unimportant accessory. One further condition is requisite, namely, that all such negative decisions be final and not subject to appeal to any other tribunal.

The Role of Community Opinion

It is desirable for communities to have an opportunity to express their wishes in regard to the issuance of liquor licenses. The sale of liquor under the present regime is defensible only on the ground that it accommodates consumer

needs. Clearly, in the absence of such need, as expressed by population units, liquor establishments lack justification. The general question of whether the sale of liquor within the confines of a given area shall or shall not be permitted should be decided through the formal vote known as local option, but, in addition, opportunity should exist for individual population groups to express opinions regarding the establishment of specific liquor businesses. Community opinion on particular liquor licenses is usually expressed through the instrument known as the petition, a signed document containing arguments for or against the issuance of a specific license. Such a document is submitted to the proper authorities when an applicant publishes his intention to establish a certain liquor enterprise. The manner in which these announcements are made varies from state to state, as does also the form and the general nature of the petition. Neither of these matters is of importance since they have little effect on the end in view. The only really important consideration in connection with the petition is the role it should be permitted to play in determinations affecting licenses. Injudicious use of this instrument may become the cause of serious hardship; overdue consideration for local prejudice may result in unjust denial of liquor licenses, whereas insufficient consideration for community wishes may deprive the residents of the respective communities of their alleged right of self-determination. It is no easy task to evaluate the relative rights of the two sets of claimants, as administrators have recognized. As one administrator expressed it, discount has to be made for self-interest and for the fact that petitions are often signed in an irresponsible manner, more "as friendly accommodations without any considered thought of contents or effect or the argument on the other side" than as expressions of well-considered judgments comprehending the good of everyone concerned.[1]

For the most part liquor administrators and other officials tend to discredit the value of petitions because of self-

[1] D. Frederick Burnett, New Jersey, *re* Powell, Bulletin 59, Item 15.

interest and personal prejudice on the part of petitioners. The attorney general of Maryland explained that it is the duty of licensing officials "to consider and weigh the evidence, as addressed to specific grounds of protest," and to base their decision upon the facts presented, or upon such additional facts as their own investigation may disclose.[2] But a few officials take the opposite point of view, believing that prejudice itself is an admissible factor when the contentment of a community is at stake. Take the court decision in the case of Van de Vegt v. Board of County Commissioners in Colorado.[3] Here the aggrieved person had appealed from the action of the licensing authority because he felt this authority had exceeded its power in refusing a license inasmuch as his fitness as an applicant and the propriety of locating a dispensary at the place proposed were beyond question. The court held this contention to be unsound in that it did not take into consideration the licensing authority's freedom to consider the desires of the inhabitants as evidenced by petitions and remonstrances. According to the presiding justice, the fact that the desires of the petitioners are or are not influenced by any such factors as the character of the person applying for the license, the proposed location, or the character of the business itself is irrelevant. Even conscientious objection to the traffic as a whole is a proper motive for opposing the issuance of any specific license, and therefore a proper subject for consideration by the licensing authority. "The desires of any part of the citizens, however influenced, evidenced by petitions, remonstrances, or otherwise . . . are proper for the consideration of the Board, to be given such weight as shall be reasonable and as it shall determine."

Each of these two points of view contains some truth, a fact which indicates how great is the need for discretion, good sense, and tact in liquor administrators. On the whole, it would appear that while well-founded community preju-

[2] Opinion to the License Commissioner of Frederick County, Jan. 6, 1936.
[3] Larimer County, Supreme Court, Feb. 3, 1936.

dice has its place in the appraisal of license applicants, such prejudice should not be allowed to constitute an infringement on the rights of applicants. Very often the number of persons signing the petition serves to indicate the weight that should be accorded to it, but even that factor is only relatively reliable. A collection of opinions, however large, secured through undetermined methods is proof of neither compliance nor noncompliance with the law, nor is it proof of either the worthiness or the unworthiness of the applicant. Such matters, as one liquor administrator expressed it, "are not proved either way by merely counting noses."[4]

Criteria Employed in the Evaluation of Applicants

The liquor laws generally furnish some standards for the measurement of eligibility for liquor licenses. Proper age and citizenship are two universal requirements; "a good moral character" is another. The value of the requirement that a license holder must have a good character is beyond question, but the ascertainment of the possession of such a qualification is definitely fraught with difficulties. Even when the vagueness of the requirement is somewhat reduced through the stipulation that licensees may not have been convicted of criminal or other serious offenses, no infallible criteria are provided. This is especially true in states where the proscriptive offense itself is only vaguely defined. For example, in Illinois the applicant is barred from a license if his record contains a conviction for a crime or a misdemeanor "opposed to decency or morality," and in Florida and New Jersey if it contains a conviction for a crime "involving moral turpitude." In all these states, and in others with similar requirements, whether any given crime will be regarded as a bar against a license or not depends much on the general outlook of the licensing authority. Those officials to whom all crimes appear to be opposed to decency will inevitably decide one way, while those who are capable of drawing finer distinctions will decide another way.

[4] D. Frederick Burnett, New Jersey, *re* Powell, Bulletin 59, Item 15.

The difficulties of application inherent in the statutory standards, however perplexing, are not the most serious that the problem presents. The mere absence of a criminal record, even when absolute, is no guarantee of honesty, integrity, and dependability. An applicant may measure up to all the statutory requirements and yet fail to qualify for a liquor license. For example, an applicant whose record shows numerous arrests for violation of the National Prohibition Act is not the less ineligible for a liquor license because the record fails to show a single conviction. Similarly, no one would contend that a person addicted to the use of liquor is a suitable person to conduct a liquor establishment. Denial of a license for any of these and numerous other reasons could not possibly be construed as unwarranted use of power on the part of the issuing authority.

Another criterion, other than statutory qualification for the person, regards the character of the premises to which the license refers. A place may be well equipped for liquor selling and yet fail to constitute a proper environment for such a purpose. A bad reputation, for example, might very easily constitute a barrier against qualification, as illustrated by the case of Parente in California.[5] The court held that the board did not act arbitrarily in denying a license "where reports of police and investigators indicated that the premises had been a police problem before prohibition and after repeal, and where the same conditions would be increased if a license were granted." A similar attitude was taken in Pennsylvania where evidence and testimony revealed unwholesome associations connected with certain premises proposed for liquor selling. The presiding justice summed up his position as follows:

> Without quoting further from the testimony, we think taken as a whole it clearly shows the bad reputation of the premises under consideration, and as we have before stated we think the Pennsylvania Liquor Control Board was justified in refusing for a third

[5] Parente v. State Board of Equalization, Third District Court of Appeal, ('34), 36 Pac. (2nd) 437.

time the application of Keero Kristoff for a Restaurant License authorizing him to sell liquor upon the premises.[6]

Other factors which may serve to render premises undesirable for liquor selling are nearness to churches, schools, or other institutions of a similar semipublic character,[7] the fact that the premises are used by minors or that they are generally socially undesirable.

Importance of the Discretionary Power

Frequent reference has been made to the necessity for endowing licensing authorities with wide discretion. The factors connected with licensing which cannot be measured by rule of thumb are so numerous that unless the authorities have power of free discrimination the value of the whole licensing structure is impaired.

One frequently recurring situation requiring the use of administrative discretion arises when the wife or some other relative of an ineligible person applies for a liquor license. Another situation is that created when commercial organizations attempt to procure the privileges of clubs by falsely classifying themselves as such noncommercial organizations. Since in most states the law provides that with the exception of clubs and fraternal organizations no alcoholic beverages may be sold in places concealed from public view, evasion of the screen regulation through classification as such a noncommercial organization becomes a natural objective. Only the freest administrative discretion allows proper discrimination between false and bona fide applications for club licenses. These two examples can but vaguely suggest the innumerable instances when the use of free judgment by liquor administrators is indispensable.

The liquor laws reflect an appreciation of the fact that administrative discretion is a necessary condition to efficient liquor control, and quite generally they contain provisions

[6] Kristoff's Appeal, Court of Quarter Sessions, Dauphin County, 41 Dauphin Co., Rep. 23.

[7] Nearness to such institutions is very often a statutory disqualification.

granting such discretion to control authorities. The important factor, however, in rendering the potential statutory power into an actual one, is judicial support. Repeated reversal of executive judgment by the courts results in nothing but a nullification of the intended administrative discretion. Although courts differ in this respect, it may be said that on the whole the tendency is to sustain the liquor authorities. One typical judicial pronouncement is to the effect that a court is not authorized to hold the licensing body's action arbitrary and capricious where such action is based on evidence from which reasonable men might honestly draw different conclusions.[8] "We have held," it says, "that even a reasonable doubt must be resolved in favor of the action of the Board vested with discretion." Similar interpretations are found in the court decisions of other states, indicating a general appreciation of the fact that no mechanical device injected into the law can be as effective in the elimination of undesirable licensees as unbiased human judgment. Under such an arrangement, however, the importance of securing honest and intelligent administrators is obvious.

Supervision of the License

The administrative task which follows the issuance of the license is supervision of licensed establishments. It is customary to combine into one united function this task and the inspection of all premises where liquor is produced or sold, whether licensed or not. The twofold task of supervising licensed establishments and uncovering unlawful traffic in intoxicating liquors usually constitutes the enforcement section of liquor administration. The subject of law enforcement will be treated separately in a later chapter. At the present time only a few administrative problems connected with the supervision of licensees and licensed premises will be considered.

[8] Van de Vegt v. Board of County Commissioners, Larimer County, Colorado Supreme Court, Feb. 3, 1936.

It is a matter of universal agreement that strict supervision of licensed establishments is a necessity; no similar unanimity obtains, however, in regard to the agency that is to be entrusted with this responsibility. The diversity in point of view is indicated in the statutory provisions. Although the usual arrangement places a joint responsibility on liquor authorities and police agencies, other arrangements obtain in sufficient number to present a diversified administrative pattern.

Local Police

For example, Connecticut, Idaho, Maryland, and a few others are distinguished from other states by the fact that under their systems enforcement of the liquor law is delegated entirely to local police agencies. The efficacy of this arrangement varies with the enthusiasm of local enforcement officers. In many states, especially where the local units are excluded from other forms of participation in the administration of the liquor law, cooperation from local enforcement agencies is chiefly conspicuous by its absence.

Idaho affords a striking example. Here the local enforcement agencies not only are disinclined to assume responsibility for the enforcement of the state-administered liquor law, but openly admit their apathy. In a public statement, issued in August, 1935, a group of city and county peace officers declared that they were "unwilling to take steps until the policy of the liquor commission relative to law enforcement is definitely determined." While such an attitude is not justifiable in any state, it is particularly reprehensible in Idaho where the liquor statute designates in detail the various law enforcement units charged with the responsibility of supervision. Section 89 states explicitly that "in every county in Idaho the county attorney will constitute the head of the enforcement division for the Idaho Liquor Control Commission," and that, "as supplementary aids to such attorney shall be the sheriff and his deputies, and the police department of every city." The open reluctance to as-

sume obvious responsibility displayed by these officials is almost incomprehensible. As one outraged citizen of Boise expressed it, "How *can* officers sworn to enforce the law wait upon some outfit when they see violations taking place?"

The explanation usually offered to account for this attitude is that the local police have no incentive to enforce a state-administered law. But it must be admitted that this argument is hardly supported by failure of local authorities to administer such portions of the existing law as do fall within their jurisdiction. It is their duty to enforce all laws whether they participate in their administration in any other respect or not. And yet in order that enforcement agencies may have every advantage at their disposal it is desirable for them to have at least some part in approving or disapproving applications for licenses. The local police in the end must deal with all law-enforcement problems; therefore they should also pass judgment on the suitability of applicants for liquor licenses.

Supervision by State Agencies

In contrast with the arrangement exempting the liquor authority from all responsibility in supervising licensees and licensed premises is that system, exemplified chiefly by California, Delaware, Florida, and Indiana, which singles out the liquor authority as the primary, if not the sole, responsible agent. Effective supervision in such states requires a large enforcement staff in the liquor-control department. Thus in California in 1935, out of a total of 475 liquor-control employees, as many as 340 were assigned to law-enforcement work. In Florida the liquor law expressly authorizes the governor of the state to appoint supervisors, up to twenty-four in number, for the purpose of inspecting the premises of all licensees, collecting the liquor taxes and enforcing the provisions of the law generally. During 1935 twenty inspectors were required for the performance of this task. In Indiana, during the same period, the liquor

authority required thirty-six inspectors out of a staff of sixty-eight employees. Although theoretically the delegation of this duty to the liquor authority does not preclude participation by police agencies, actually it does tend to create an attitude of indifference on their part. The arrangement tends to create in addition a rather extraordinary attitude on the part of the liquor authorities that assistance from local enforcement officials is not desirable. One liquor-control official in California expressed such a point of view in a most unhesitating manner. He said, "Not only do we not want to share control with the local police, but we do not even want their cooperation." The explanation was offered that cooperation from local police "is bad cooperation," that it consists in harassment of the licensees to "pay off."

Division of Responsibility

Between these two extreme positions is that embodied in the enforcement policies of New Jersey, Massachusetts, and other states, which is characterized by a division of responsibility between the two sets of control authorities. In New Jersey, for example, although the liquor act expressly designates the municipalities as the primary enforcement agencies, the state alcohol department employs 116 men in its enforcement division as against 44 other employees divided between the licensing and legal divisions. New York belongs in this group, although there the division of responsibility is on a different basis. Whereas in New Jersey the enforcement division of the liquor department undertakes as a major portion of its task the uncovering of illicit traffic, the New York State Liquor Authority restricts its enforcement activities exclusively to the supervision of licensed premises and leaves all other portions of the law enforcement to the local police. Governor Herbert H. Lehman expressed the state policy in an address before the Brewers Association in October, 1934, when he said: "The state license issuing body should see that licenses

are not abused; that they are forfeited when abuses arise; and they should see that those entitled to licenses under the law obtain them. So far as evasions of the law are concerned, the enforcement of the law lies directly and exclusively with the local authorities."[10] Governor Lehman declared himself opposed to the creation of "huge bodies of snoopers under state government," who go around without any specific duties, and who would "take over some of the responsibilities of the local officers in county, city, town and village."

Although the policy of divided responsibility implies ambiguity and therefore creates an opportunity for neglect of duty, nevertheless it seems to be the best that can be devised. The state liquor department is never adequate in size to cope with a task as vast as supervising licensed premises and uncovering bootleg activity; the local agencies, in their turn, are not as dependable in the performance of their duties. Therefore, as in dealing with license applicants, a system of cooperation is recommended whereby the local officers assume responsibility for making investigations and reporting on possible violations of the laws to the state authority, which in turn is required to make its own investigation before final action is taken. Then, too, special opportunity for cooperation is provided in all instances of violation which extend beyond the bounds of any specific territorial subdivision. There is no doubt that opportunity for such cooperation is frequent, since, in the words of a liquor control official, "crime obeys neither municipal nor county lines."

Revocation and Suspension of Licenses

The third important administrative function connected with the license system consists in meting out prescribed penalties for violations of the law. The principal penalties licensing authorities are empowered to impose are a temporary suspension of the license and permanent cancellation.

[10] Oct. 9, 1934, in New York City.

The liquor laws generally declare the necessity of revoking licenses. The usual stipulation is that a conviction for the violation of any provision of the liquor law or of any regulation of the liquor authority automatically annuls the validity of the offender's license. In a few states the imposition of this penalty rests entirely with the control authority. California affords a striking example of this administrative policy. Article XX of the Constitution of California states that the State Board of Equalization, which is California's liquor authority, "shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals."[11] Similar latitude is entrusted to the liquor authority of Wisconsin. Although this state's liquor law specifies the offenses which carry with them the revocation penalty, the grounds upon which liquor licenses may be revoked are not limited to those designated. In the state's attorney's words, the provision in question "was intended by the legislature as a supplementary provision for the revocation of liquor licenses and not as a statutory limitation of the licensing board's power to revoke licenses." According to him, no such intent to impose a restriction on the power of the licensing authorities is set forth in that section of the law which deals with the subject, and therefore, in his opinion, "no such intent should be read into it."[12]

Value of the Revoking Power

The value of the revoking power is obvious. Its effectual use converts the liquor authority into a powerful enforcement agency since the swift punishment it is able to mete out acts as a deterrent against law violations, a fact thoroughly appreciated by liquor administrators. The New

[11] Section 22.

[12] Opinion delivered to the District Attorney of Oconto, Apr. 25, 1935.

York liquor authority's report for 1935 states that during the past year on-premise licensees had been lax and indifferent in observance of the law and that only negligible relief had been provided through arrests and prosecutions by local police agencies, but that the power of revocation vested in the State Liquor Authority had been "the most effective and almost the only check upon these offenses."[13] Indeed, in states where the liquor authority is loath to revoke licenses, licensees commonly repeat the same offenses, inasmuch as the usual substitute, the fine, is lightly regarded. Fines, in Commissioner Burnett's words, are "too readily absorbed by the inordinate profits of illicit traffic."[14] Consider but one example which supports this contention, the situation in Los Angeles as described by one of that city's governmental officials. This official disclosed that in 1934 many establishments had been raided several times for the same offense. "We have a place on Maple Avenue," he said, "whose proprietor we have arrested forty-one times. But still the dump runs." In a few states the power of revocation given to the licensing board is nullified by counter-restrictions. The situation in Illinois, already described, affords one striking example. While the state liquor authority is vested with power to revoke licenses for cause, it is not empowered to determine whether in a given case such cause does or does not exist. Another example is furnished by Connecticut where the state liquor board is empowered to institute revocation proceedings only against those licensees who have been convicted for law violation in the state or local courts, an arrangement denounced not only by liquor-control officials, but also by members of the liquor trade. According to one official of a liquor-trade organization, the system reduces the liquor authority to a mere licensing agency and "almost completely destroys its

[13] Report of the State Liquor Authority of New York for the year 1935, p. 8.

[14] Annual Report of the New Jersey Department of Alcoholic Beverage Control, 1935, p. 6.

ability to discharge the duties imposed upon it by law as an enforcement agency," a consequence most regrettable since "the swift justice dealt out by the liquor authority is the only safeguard which the public and the law-abiding elements of the industry can depend upon for the proper enforcement of the law."[15]

As we saw in the preceding chapter, a license or a permit is nothing more than a permission to do some act which, without such permission, would be illegal. The authority which granted the permit should therefore have the power to revoke it when such action is justified. From our earlier discussion it would follow also that in such an act of revocation the liquor authority is exercising a purely administrative or executive function and not in any sense a judicial one. For this reason a few of the states make the revoking power of the liquor authority final, without provision for any recourse to the courts. However, since the whole subject of enforcement is taken up in detail in a later chapter, it need not be further pursued here, except to emphasize the importance of providing for prompt and unhindered revocation of licenses wherever necessary. With less than this there is no true control.

Agencies Empowered to Revoke

The really important question from the point of view of administration is: Shall the power to revoke licenses repose in the state or in the local authorities? The general practice at the present time is to entrust this power to the control body which issues the licenses. In a few instances, as for example, New Jersey, the state liquor authority has power to revoke for cause not only the licenses it grants but also those granted by the local licensing authorities. This is an advantage not only for the state-control authority but for the whole liquor system, a fact generally recognized.

[15] Colonel Ralph C. Tobin, President of the Retail Wine & Liquor Guild, quoted in the New York *A.B.C. News*, Vol. 3, No. 8, p. 12.

The essential strength of our liquor law [remarked a prominent member of the New Jersey Bar] lies in the wide discretionary powers which have been retained for the liquor commissioner. Politics have often been played by local licensing authorities in granting licenses. But the commissioner has never hesitated to upset discriminatory action by local authorities, despite the undoubted political pressure which must have been exercised to have him sustain the municipalities.

The priority of state power described above renders the system of divided responsibility a dependable and workable one. Nevertheless, in our opinion, granted that the state authority is the proper licensing agency, the best policy is to have this right of revocation entrusted exclusively to the state. It is logical that once a license is issued the responsibility for its continued validity should be with the agency which effected its issuance. Nor does such an exclusive state right debar local assistance. The municipal and other local authorities assume a major share in the investigation of licensed establishments. Prompt action by state authorities on all verified recommendations from these sources creates a sense of cooperation between the two classes of authorities and furnishes assurance to the local officials that their value as coworkers is appreciated.

Appeals from Actions of Licensing Officials

The liquor laws generally provide opportunity for appeal from the adverse decisions of the various licensing authorities; only a few omit all mention of the subject,[16] while Utah and Virginia expressly state that the acts of the liquor authority are final and with no appeal whatsoever from them. In Massachusetts, Nebraska, New Jersey, and Rhode Island, provision is made for appeals from local governing bodies to the state liquor authority, but no like opportunity is provided from the latter agency.

While our tradition of individual freedom presupposes the right of impartial adjudication in controversial matters, in the realm of liquor control other considerations counter-

[16] *E.g.,* Arizona, Minnesota, North Carolina, and Vermont.

balance this prerogative. One consideration is that the liquor authority's familiarity with necessary facts renders it the best judge, another is that appeals to tribunals other than the liquor authority provide opportunities for liquor selling by undesirable persons during the period pending court action. In all cases where a licensee is adjudged guilty by the courts, a law violator will have been selling liquor for a considerable period, from the time when the case is filed in the court until the judgment is handed down, a situation distinctly disadvantageous.

The states differ on the type of grievance from which appeal is provided. Thus, while most states permit appeals from every kind of adverse decision, Arkansas, Kentucky, Nebraska, Oregon, and South Dakota, permit them only from revocations, while a few others, including Delaware and Louisiana, provide appeal only upon the refusal of a license and not on its revocation. It is hard to understand the legislative intent in making arrangements of this kind. Reference has already been made to the numerous ways in which the Illinois law manages to nullify the principle of state control which its liquor system ostensibly espouses. A further instance of this maneuvering is shown in the provision on appeals. Whereas for the rest of the state appeals from decisions of the state liquor commission lie to the courts, in cities of more than 200,000 population they lie to a special appeals commission consisting of the secretary of state, a person elected by the legislative body of the city, and one member of the state liquor commission. As citizens of the state expressed it, the arrangement "is nothing but a concession to Chicago politicians."

Interpretative Regulations

The exercise of administrative authority presupposes the right to promulgate rules and regulations necessary for the effective operation of the law. In most instances the provisions of the liquor statute are so detailed that copious regulations of a purely interpretative character are re-

quired. The important consideration in connection with this type of regulation is that it be administrative in character. While as binding as law, a regulation created solely for the purpose of interpreting the law should not itself be of the nature of law. A regulation that displaces, amends, exceeds, or in any other way changes the law to which it refers is legislative in character and therefore untenable. The famous cocktail ruling of the California liquor board is perhaps the best illustration of a rule that purported to be administrative but which in essence was genuinely legislative.[17] During the first year of legal liquor the original unpopular provision limiting the sale of spirits to unopened packages was virtually repealed by the liquor authority through its ruling that cocktails, which it classified as wines, could be sold and served for consumption in bona fide hotel dining rooms and restaurants. As a result of this ruling cocktails were served freely and openly as though they were nonspirituous. "The law is clear to everybody but to the State Board of Equalization. It is *not* legal to sell hard liquor by the drink in California." This indictment by an indignant newspaper is not without justification.[18] Indeed subsequent court decisions made clear the invalidity of the board's action. One such decision declared that the various mixtures classified as wines were not wines, and that "the dictum of the State Board of Equalization to the effect that they were had no effect."[19] Liquor administrators are authorized by law to make rules and regulations pursuant to the provisions of the liquor-control acts, but are not authorized to make rules that are contrary to the terms of the acts.

Regulations Embodying Discretion

Occasionally the liquor law endows the control authority with the right to prescribe rules that go beyond

[17] Page 63.

[18] *Political Straws*, Jan. 29, 1934.

[19] Tux Ginger Ale Co., Ltd., et al. v. Davis et al., Second District Court of Appeal, Division Two.

mere interpretation of the law. Such authorization vests the control body with genuine discretion. The value of administrative discretion was noted in connection with the appraisal of license applicants. The need for such freedom of action exists in other phases of liquor control. The legislators appreciated this need in certain instances, as is revealed by the fact that the determination of several important matters was left to the control officials. The manner of labeling liquor containers is sometimes determined by executive order; and the closing hours of liquor establishments, the nature of liquor advertisements, and the numerical limitation of liquor licenses. The value of the power to limit licenses to a desired number is effectively illustrated in New York. The framers of the New York liquor law, in an attempt to forestall subsequent overcrowding in the field, placed a provision in the law requiring all wine and liquor stores to be 1,500 feet apart in New York City and 700 feet apart elsewhere in the state. This restriction was not deemed adequate to keep down the number of liquor establishments, however, as the legislators showed by giving the state liquor authority the right "to limit in its discretion the number of licenses of each class to be issued within the state or any political subdivision thereof."[20] Indeed, the law states that the state policy is best carried out by empowering the state liquor authority to determine whether public convenience and advantage will be promoted by the increase or decrease in the number of licenses.[21]

The New York State Liquor Authority has not hesitated to use this privilege. As early as May 1, 1934, it adopted a rule which provided that no applications for off-premise licenses additional to those already in existence were to be received by the local boards until otherwise instructed. On January 4, 1935, in a circular letter to the local boards, the authority made further stipulations in regard to the periods

[20] Section 17 (2).
[21] Section 2.

when the various local boards might receive applications for off-premise licenses.[22] No "1,500-foot" rule or any other statutory restriction can possibly be as effective as the authoritative mandate here described. The liquor administrators knew when the saturation point in liquor stores was reached. They prevented an increase in such establishments by a simple mandatory rule. It is generally more difficult to restrict the number of on-sale licenses for meal-serving establishments because the method of discriminating in granting licenses is inapplicable to hotels and restaurants already in existence. But when the licensing authority possesses the power, as the New York authority does, to declare that in its opinion "the social needs of the people of the State of New York are being adequately served with the number of existing on-premise licenses now in effect," and that therefore no more licenses will be issued until further notice, the problem becomes as simple as the limitation of the package liquor stores.[23] To be sure, the individual applicant who qualifies for a license in every respect is sometimes injured through the exercise of this power. Yet if, as the law declares, the state's interests are best served through such an arrangement, it is of utmost importance that the liquor authority be unhindered in the application of its discretionary privilege.

It is a distinct indication of farsightedness on the part of the New York courts that the discretionary actions of the state liquor authority are consistently upheld. The decision in the matter of De Luca illustrates the common judicial attitude.[24] In this case an application had been twice denied "for the reason that the State Board, in fixing the number of retail licenses to be granted within this State, and the location, type and character of the premises to be so licensed, did not deem it advisable to grant a license."

[22] Circular No. 40.

[23] Circular No. 45 to Local Boards, March 5, 1935.

[24] Mulrooney et al., Supreme Court, Special Term, Queens County, Dec. 19, 1935.

In the court's judgment the action of the liquor board was a proper exercise of its power and not a willful refusal to perform its duty. Under such circumstances the court held itself powerless to force the liquor board to act in any other way than it had. The court says, quoting from People ex rel. McCabe v. Matthies:

> If the duty of a board be of a judicial character, a mandamus will be granted only where there is refusal to perform it in any way; not where it is done in one way rather than another, erroneously instead of properly. In other words, the court will only insist that the person who is the judge shall act as such; but it will not dictate in any way what his judgment should be.

All regulations promulgated through the exercise of discretionary and judicial power constitute amendments to the law and are therefore legislative in character. The value of the power to issue such regulations has been emphasized. It is through the use of this power alone that the interests of the social order are best served. Liquor administrators in most states are allegedly chosen to administer the liquor law and promote temperance, law, order, and general welfare. Without genuine administrative strength for the control authorities such ends cannot be attained.

Limitation of the Number of Licenses

The problem of limiting licenses to the proper number has been touched on. Likewise, the problem's importance has been emphasized. Indeed, no single matter is more important, for an oversupply of sales establishments can wreck any liquor-control system, however well conceived otherwise. At the present time, due in considerable part to the economic depression, overcrowding is perhaps more acute than in any previous period of legal liquor. In many places there are far more liquor outlets than consumer needs justify. The seriousness of such a situation is readily apprehended when it is remembered that even without such overcrowding the natural tendency of any liquor busi-

ness is to push its sales and increase its profits. The liquor business has a reputation for greediness and for a disinclination to abide by the dictates of the law whenever the latter hinders its activity. Indeed, it has been contended that the primary weakness of the license system is that it preserves the private-profit motive which permeates the entire liquor industry from manufacture to ultimate local sale. Elimination of just this factor—the desire to increase profits—was the chief cause for the repudiation of the license system by a number of our states. If the profit motive is the dominant feature of private trade as such, it is readily seen that under overcrowded conditions this feature will be accentuated. Even proprietors who would not otherwise resort to illegal practices will, when competition is severe, indulge in whatever business methods—whether legitimate or illegitimate—will insure a reasonable income.

The obvious remedy for such undesirable conditions is reduction in the number of sales outlets. The question which naturally suggests itself is: what constitutes the most effective method for such a reduction? Should the legislature determine how many licenses there should be in the state or is this matter best left to the state board? It is also necessary to determine whether it is more desirable to set the limit for the state as a whole, or for each locality, and if for each locality, then what part, if any, the local officials should take in the matter. Every conceivable method of limitation is now being tried out, and not without attendant difficulties. Consider the situation in those states, for example, where the determination of the number of licensed establishments is entrusted to the control authority. Unless the exercise of this discretion is unhindered as it is in New York, numerical limitation is really nonexistent. As one liquor official expressed it: "It is easy enough to put a provision in the law to the effect that the liquor board shall grant licenses only in such number as shall be deemed sufficient for the needs of the community. But when it is known beforehand that all attempts on your part to exer-

cise this discretionary power will be reversed by the courts, the application of the provision is far from easy."

The next question in connection with limiting the number of licensed establishments is where the discretion to effect the limitation is to be located. Our investigations have disclosed that the temptation to issue licenses indiscriminately is more common among local licensing authorities than among state authorities. The point of view brought out in the following remarks by a police chief in a New England town is not an isolated example of greed for revenue on the part of local licensing authorities. "A lot of beer licenses were handed out" [he said] "because the $250 license fee looked pretty good. Not only that, but the licensing authorities wanted me to hold up proceedings against a certain licensee who had violated the law until after the renewal date so that the $250 fee might not be imperiled." Nevertheless, inasmuch as the local officials are most familiar with the needs of their communities, a system is desirable whereby the local authorities indicate the limitation but the state authority has the power to issue the licenses to that limit.

There is a theory that the law of supply and demand will more effectively accomplish the desired limitation of the number of licenses than any administrative efforts. It is held that the principle of free competition operates in other fields of private enterprise and that it may be assumed that no better principle can obtain in the liquor business. This contention, however, can be upheld only if other restrictive measures are strenuously applied. One such measure is the scrupulous weeding out of licensees who cannot make a success of their business without resorting to illegal practices. This proviso is of the utmost importance. Another is the elimination of subsidization of retail licensees by brewers and distillers. This practice, commonly referred to as the tied-house system, grew up during the saloon era; the saloon itself was the product of the system. The brewing and distilling industries, like other businesses,

developed from an amalgamation of small local units with limited production into large corporations with tremendous outputs. Competition for retail outlets between these companies was keen, the aim in each case being more profit through increased sales. In pursuance of this policy the brewers and distillers advanced money to finance saloon keepers, paid their license fees, or bought saloons outright, putting their own agents in charge. One definite result was the maintenance of a greater number of saloons than community needs justified.

Although most of our present laws attempt to forestall a recurrence of this practice by prohibiting any financial relationship between manufacturers and retailers, the system of the tied house is reported to be extensive at the present time. That this practice exists has been admitted even in states such as New York and Illinois, where not only the manufacturer but also the retailer is liable to punishment for violation of this provision. Investigations of the transactions of brewing companies in several states disclosed such facts as the receipt of financial assistance by beer-parlor proprietors and restaurateurs from brewers in the form of direct loans, chattel mortgages, overdue credit, and similar forms of financial aid. The liquor administrators in every case denounced the system as an aid in the maintenance of superfluous retail outlets. "The brewer-retailer combination is a vicious system," said one administrator, "because it keeps in existence a great number of retail establishments which otherwise would be forced out of business, and rightly so." A similar statement was made by a liquor-control official in California: "Most of the licensees are just barely making enough at the present time to struggle along until their licenses expire. In Los Angeles 20 per cent of the package retail establishments have already gone out of business because of inability to withstand the competition. The new provision that credit cannot be extended to retailers for a period longer than thirty days will get rid of them even faster. This will be a great

help because many of them struggled on for several months after the time had been reached when they should have closed up." It can therefore be readily appreciated that, considering its effect on the number of retail establishments, the tied house is an institution that should be completely eliminated.

In concluding the subject of license limitation, we may say that in our opinion neither the law of supply and demand nor the scheme of a statutory limitation on the number of each class of liquor license is adequate for dealing with the problem of overcrowding. The risk involved in experimentation with either method is tremendous. Lively sales campaigns in intoxicating liquors produce harmful results even during short periods of competition. It is far better to prevent all improper competitive practices by keeping the number of liquor establishments constantly restricted. And such restriction is best accomplished through the system of curtailment which depends on administrative discretion as it is exemplified in the New York and similar liquor-control systems.

Recording Administrative Actions

Our argument throughout has been for strong state rule and for the free use of administrative wisdom and intelligence. It is clear, however, that the more discretion a control agency enjoys the more important it is to safeguard against abuse of power. The choice of able and honest administrators furnishes the best safeguard; another is the requirement that administrators prepare an adequate record of action taken in the execution of their tasks. The knowledge that every decision together with the reasons on which the decision is based will be recorded in writing constitutes a safeguard against careless and unfair administrative practice. The necessity to record in writing the reasons for all action will eliminate slipshod methods of deliberation. In addition to exerting a beneficial influence on administrative practice this introduces consistency into

administrative policy. It furnishes a guidepost for future action and thus helps give form and substance to the administration.

With a few exceptions, the present liquor laws do not require the recording of briefs on administrative actions. The Pennsylvania liquor law requires that the Court of Quarter Sessions, the authority with exclusive right to suspend or revoke licenses, file for record at least a brief statement, in the form of an opinion, the reasons for its ruling in all cases where a license is revoked or denied. The Washington law requires that local officials submit in writing to the state authority any objections they may have to the issuance of any licenses. Also, in most states the liquor authority must furnish written reasons for its actions to the persons involved. The Virginia requirement in this connection is typical. Section 20 of the liquor law states:

> The Board shall not refuse to grant . . . any license, except upon a hearing held after ten days' notice to the applicant of the time and place of such hearing, which notice shall contain a statement of the objections to granting such license, and shall be served on the applicant as other notices are served or by sending the same to the applicant by registered mail to his last known post office address.[25]

While the above arrangements have advantages, they do not constitute adequate recording systems. The most satisfactory arrangement provides for a full explanatory account of all administrative action. While such a practice is not a legal requirement anywhere, remarkably enough it is a voluntary practice in New Jersey. The commissioner of this state inaugurated the system upon his assumption of office and has carried the policy forward consistently. This is an extraordinary instance of administrative initiative. The system is not only one of choice but is, moreover, entirely unique; it is not found in any ordinary state practice outside of courts. The New Jersey liquor bulletin, containing a full account of all action taken, is without precedent in

[25] Laws of 1934, Chapter 94, as amended by Laws of 1936.

state administration. It is so comprehensive that its perusal acquaints the reader with the liquor department's policy on innumerable licensing and disciplinary problems. Reading it also acquaints the reader with the fairness and impartiality which characterizes all the decisions. The arguments on which the decisions are based are reasonable and indicate the use of tempered judgment. A stranger, totally unacquainted with the persons and situations involved, on going over these records, will feel convinced that the particular situation in each case has been thoroughly grasped, that the decisions are just and that they have been reached after the most careful and searching thought. Moreover, although cast in legal form, the decisions are far from being primarily legalistic. Every variation in circumstance is taken into account and every human element considered and allowed for. The system is bound to influence future practice relating to liquor administration, not only in New Jersey but in other parts of the country as well. It is a real contribution to the technique of state administration.

The Size of the Administrative Task and the Cost of Operation

The volume of administrative work connected with liquor control is indicated to some extent by the liquor revenue. The table on page 102 sets forth the receipts from liquor sources during 1935 and the cost of administering the liquor law during the same period among the private distribution systems.

Varying Factors Influence Size of Task

Variations in control patterns produce differences in administrative operations, which in turn give rise to disparity in administrative costs and expenses. For example, the volume of enforcement work is such a variable factor from state to state that the expenditure involved also varies and renders a comparison of total administrative costs practi-

TABLE II

LIQUOR REVENUE AND ADMINISTRATIVE EXPENSE

	Total Revenue	Administrative Expense	Per Cent of Total Revenue Expended for Administration
Arizona	$ 428,312	$ 59,270	13.8
Arkansas	886,545	48,669	5.4
California	12,365,307	1,585,261	12.8
Colorado	2,029,634	93,387	4.6
Connecticut	3,015,741	102,172	3.3
Delaware	435,936	83,565	19.1
Florida	1,904,203	80,755	4.2
Illinois	8,543,417	454,367	5.3
Indiana	5,674,506	132,734	2.3
Kentucky	3,663,297	120,000	3.2
Maryland	1,656,610	78,414	4.7
Massachusetts	7,214,045	125,694	1.7
Minnesota	3,411,084	124,144	3.6
Missouri	4,713,770	140,609	2.9
Nebraska	896,852	87,167	9.7
Nevada	143,041	5,396	2.7
New Jersey	11,252,531	558,927	4.9
New Mexico	613,857	20,823	3.3
New York	38,163,563	1,042,245	2.7
Rhode Island	1,544,924	101,540	6.5
South Carolina	1,338,636	26,555	1.9
Wisconsin	4,834,745	11,246	00.2

NOTE: For explanatory details see Table of the Appendix. These figures must not be compared without taking into account what lies back of them.

cally impossible. In Connecticut no expense is involved in the enforcement of the liquor law. As one of the liquor control commissioners expressed it, "Our own inspectors are not policemen; they investigate applicants and proposed premises, but they do not go about supervising licensed establishments to see whether law violations are taking place." As a consequence, and since no offsetting circumstance exists, the cost of operation in this state is very low, 3.3 per cent of the total liquor revenue. The smallness of the figure is even more thoroughly appreciated when it is remembered that Connecticut belongs to the group of states in which every type of licensing, including that of the retail trade, is handled by the state liquor-control de-

partment. Economy may account for part of the success in keeping down the cost, but undoubtedly the saving made possible by the absence of an enforcement division is an important element. California affords a strong contrast to the situation in Connecticut. There during the past year as many as 340 employees in the state liquor-control department were assigned to enforcement work, and consequently the cost of maintaining the whole staff played a considerable part in raising the amount of the administration cost to its relatively greater size of $1,585,261, or 12.8 per cent of the total liquor revenue. In other states also the presence or absence of state enforcement staffs is reflected in the total administration cost.

Another factor which influences the expenditure connected with liquor control is the method employed in collecting liquor taxes. In most states, although the state tax department actually collects the liquor excise, the cost such collection entails is counted in with the expenditure of the liquor-control department. Thus during 1935 the tax departments of Connecticut, New Jersey, and New York have segregated liquor-tax collections from other related functions and charged the liquor departments with the amounts of $30,000.00, $215,915.39, and $86,429.88, respectively. In other states, especially where the whole task of administering the liquor law is placed in the tax department, the amount expended in collecting the liquor taxes is not separable from the general administration cost; usually this cost is included in the total cost of administration. Thus, the $47,135 which represents the cost of administering the liquor system in Arizona includes an undetermined sum expended to collect the gallonage taxes; the same is true in Arkansas, California, Delaware, Florida, Indiana, Kentucky, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Mexico, Rhode Island, South Carolina, and Wisconsin. In sharp contrast is the arrangement in Massachusetts, where no separate expense was recorded to represent the cost of excise collections. Liquor-tax collection is there made

part of the general tax-collecting task, and no special charge is made for the service by the tax department. According to the tax commissioner, only a very small part of his employees' time is devoted to the tax on alcoholic beverages and the additional expense to the department is therefore negligible: "As I mingle this activity, which is a comparatively small one, with other activities of the Department, I can do it without any appreciable expense." He stated further that it would have cost the alcohol-beverage commission a considerable sum to collect the liquor taxes if that task had been added to its duties.

Still another factor which causes disparity in the liquor-control expenditures of the various states is the amount of local participation in administration. The high figure in California representing administration expenses has been noted, and the cost of keeping a separate enforcement staff had been adduced as one important explanation of it. Another factor, undoubtedly, is the assumption by the state liquor authority of the entire licensing task. In states such as Massachusetts, New Jersey, Wisconsin, and others, where municipal governments perform one or more administrative functions connected with liquor control, the cost of operation for the state department is appreciably reduced. Thus in Massachusetts, New Jersey, and Wisconsin, aside from any other factors, such as Massachusetts' economical tax collection, the share in administration by local governments is definitely reflected in the low expense figures.[26]

Assistance by local control agencies does not necessarily reduce state expense, as the situation in New York illustrates. There, according to the report of the state liquor authority for the year 1935, the cost of state liquor administration was $510,763, while the sum appropriated to the county boards was $445,052, less than the state figure by only $65,710. When the value of the services rendered is

[26] They are, respectively, 1.7 per cent, 4.9 per cent, and 6.8 per cent of the total liquor revenue.

contrasted, a definite disproportion in expenditures is discerned. The limited assistance the county boards render has been noted. It may be asserted without exaggeration that the assistance from the county boards is nominal. At least such an inference is not inadmissible from the fact that the New York State liquor authority neglects to keep a record of the recommendations on liquor licenses which the several county advisory boards submit to it. It would seem that if the state authority valued these recommendations it would consider keeping a record of all local board activities both appropriate and necessary. It may be mentioned in this connection and as a further indication of the inconspicuousness of the local advisory boards that the city editor of the principal newspaper in one of the larger upstate cities was not aware of the existence of the county liquor board as late as the summer of 1935.

Proponents of the county-board system contend that the services of such boards are indispensable in gathering information on local situations and conditions. In our opinion, however, such information is obtainable, equally well and without cost, from existing local agencies. At any rate, in view of the circumstances described, it is at least worth questioning whether or not the services county boards render justify their cost. In justice to the New York administration, however, it must be pointed out that in spite of the questionable value received for the cost of maintaining the local boards, the total cost of operation is very low. In addition to the amount already mentioned, which is spent to maintain the state department and the county boards, an additional $86,429.88 is expended in collecting the liquor tax. This amount brings the total cost of operation to $1,042,245.32, a sum that compares very favorably with relative expenditures in other states.

The comparisons that were suggested in this section must be interpreted with discretion. The fundamental differences in internal arrangements preclude attempts at conclusiveness. Besides the differences in administrative arrangements,

there are still other factors which render comparisons invalid. One such factor is the size of the task itself. Obviously where a great number of licenses are issued the expense of administration will be greater than in states where there are only a few. The following table furnishes a few comparisons in the size of the retail licensing, which is the important licensing field, and in the cost of administration:

TABLE III

RETAIL LICENSES AND ADMINISTRATIVE EXPENSE

State	Total On-sale Liquor Licenses	Total On-sale Beer Licenses	Total Off-sale Liquor Licenses[2]	Cost of Administration
Arizona	495	1,081	392	$ 59,270
Arkansas	None	2,549	496	48,669
California	11,511	25,101	8,158	1,585,261
Connecticut	913	2,172	740	102,172
Delaware	268	92	69	83,565
Massachusetts	3,528	2,324	1,022	125,694
Missouri	3,371	7,068	1,525	140,609
Nebraska	296	2,530	600	87,167
New Jersey	10,388[1]	—	1,312	558,927
New Mexico	699[1]	—	103	20,823
New York	13,290	10,336	1,822	1,042,245
Rhode Island	1,464[1]	—	396	101,540

[1] Includes on-sale beer licenses.
[2] Off-sale beer licenses are omitted because they do not constitute a special licensing problem.

Another factor is the size of the state's population in relation to its total income from liquor and in relation to the cost involved in operating the liquor department. Inasmuch as a necessary minimal expenditure is involved in the establishment and upkeep of a department regardless of the size of the traffic to be controlled, the cost of operation will be higher in a small state than in a larger. For example, it costs Delaware $83,565 to operate the state liquor-control department. The total revenue from the liquor traffic is only $435,936. It is clear that for a slightly greater expenditure a far greater volume of work could be accomplished; and it is equally clear that the department could not be much smaller even if there were still less work involved. This and other considerations make crude comparisons of administration costs hazardous.

Chapter Five

STATE MONOPOLY SYSTEMS

THE widespread adoption of the monopoly form of liquor control stands out as the most striking new feature of post-repeal legislation. Of the forty states which legalized the traffic in liquor, fifteen created state-wide public monopolies for selling one or more kinds of alcoholic beverages. All of the state store systems, save Wyoming, exercise the exclusive right to sell spirits at retail by the package; most of them also sell bottled wine; and a few sell the heavier bottled beers as well.[1] In September, 1936, the list of monopoly states, shown in the order of the effective date of their liquor-control laws, was as follows:

Pennsylvania	November 29, 1933
Montana	December 5, 1933
Oregon	December 15, 1933
Michigan	December 16, 1933
Ohio	December 23, 1933
Washington	January 23, 1934
Iowa	March 9, 1934
Virginia	March 22, 1934
Vermont	April 18, 1934
New Hampshire	June 5, 1934
Maine	November 10, 1934
Wyoming	February 20, 1935
West Virginia	March 1, 1935
Idaho	March 18, 1935
Utah	March 25, 1935

More than 30 per cent of the entire population of the country—33,597,926, according to the census of 1930—is served by chains of state liquor stores.

Viewed either as a departure from the traditional methods of liquor control or as an entry of direct governmental

[1] The Wyoming monopoly is limited to the wholesaling of intoxicating liquor, not including malt liquors.

operation into a new field, the rapid spread of state liquor monopolies has not been paralleled in the history of American state governments. It was a venture into uncharted areas boldly conceived and swiftly executed. Within two weeks after repeal of the Eighteenth Amendment, four states of thoroughly diverse character—Pennsylvania, Montana, Michigan, and Oregon—had provided for state liquor stores, each without knowledge of what the others were doing.

The two industrial states of the populous East joined hands with two mining and agricultural states of the Far West in entering upon a commercial enterprise as a measure of social control. In no state, however, was there any evidence that the monopoly system was inaugurated to drive an entering wedge for the socialization of other forms of business. It was true rather that legislators feared private exploitation of the sale of liquor more than they dreaded establishing a precedent for states' entering the field of private business. They were chiefly concerned with effecting the strictest possible control over a socially hazardous trade which was about to emerge from a status of outlawry to legality.

The monopoly plan has not been particularly identified with either of the political parties; it has been set up by Democratic and Republican state administrations alike. Several of the sponsoring administrations have been thrown out of office but in each instance the monopoly survived the change.

In addition to the state-wide monopoly systems which have been established, scattered counties and cities have adopted dispensary plans for the sale of liquor. Four counties in Maryland have the exclusive right to sell spirits and wine within their borders while sale in other counties and in the city of Baltimore is by private licensees. In North Carolina eighteen counties are authorized by statute to maintain liquor dispensaries, which are the only legal outlets for the sale of spirits and wine within the state. The

liquor-control acts of Minnesota and Wisconsin give municipalities the right, if they desire, to provide for exclusive sale of liquor within their boundaries, and a few small villages in both states have set up municipal stores. North Dakota passed an act providing for municipal stores, but it was invalidated by a referendum held in June 1936.

Motives and Influences

We have been at some pains to discover what motives affected the several states which adopted the monopoly system. Two principal *influences* are rather clearly disclosed: (1) the example furnished by the Canadian provinces and (2) the strength of anti-liquor voting sentiment within the states. The primary desires were to eliminate, or at least reduce, the private-profit incentive in the sale of liquor, to provide a rich new source of state revenue, and to maintain a strict form of social control over the liquor business. Generally there appeared a mixture of motives and it is practically impossible to disentangle them so as to disclose which objective was the dominant one in any particular state.

The location of monopoly states suggests the strength of the Canadian influence. State store systems have been established in all of the upper tier of states bordering Canada except New York, Wisconsin, and Minnesota, and, as we have noted, the latter two made a concession to monopoly sale by permitting it in municipalities. A large number of persons in the border states were well acquainted with the experience of Canadian provinces in handling liquor, and this familiarity unquestionably acted as a most important influence in the neighboring states.

Next in importance was the extent of dry voting strength. Of the 22 states, including monopoly and license states, having an anti-repeal vote in excess of 25 per cent, 12 provided for some kind of state stores for the sale of liquor, 2 remained dry,[2] and only 6 adopted the private license sys-

[2] The dry states which held referenda on repeal are Alabama and Tennessee.

tem.[3] On the other hand, of the 16 states which recorded a dry vote of less than 25 per cent only Pennsylvania and Wyoming adopted the monopoly plan. In the case of Pennsylvania it is generally conceded that the strong influence and leadership of former Governor Pinchot, a pronounced dry, supported by a 24 per cent anti-repeal vote accounted for the establishment of a liquor monopoly in that state.

Although the prohibitionists within and without the legislatures deplored any form of legalized liquor selling, they had to make a choice between the old license system and the monopoly form of control. Generally speaking they favored the plan which aimed to exclude private interest in liquor sales and so halfheartedly supported the public monopoly proposals. At least they were not on the side of the manufacturers and the would-be wholesalers and retailers who opposed state stores.

Monopoly Systems Not Uniform

It is a common practice among both foes and friends of state-monopoly systems to condemn or endorse them collectively as if they were identical, or nearly so, in their organization, scope, and aims. Actually there are important differences, so great indeed that a few of the monopoly plans appear to be more nearly akin to the private license systems than to certain of the other monopolies which place the greatest restrictions on the sale of liquor.

The single feature common to all, save Wyoming, is the state-operated store for the package sale of liquor. The retail store is the identifying characteristic and the term, "state stores system," is in more general use than "state monopoly." Some of the states, notably Michigan and Ohio, in addition to operating state stores, have arranged a sort

[3] The license states are Arkansas, Colorado, Indiana, Kentucky, and South Carolina. The votes of 9 states (Georgia, Kansas, Louisiana, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Dakota) were not certified to the Secretary of State in Washington. The popular vote in Nevada was not recorded. For results of the votes on Repeal see Appendix III.

of partnership with private dealers by designating them as agents of the monopoly in the sale of package goods. The monopolies in four states, Iowa, Montana, Utah, and West Virginia, restrict the right to sell all spirits, wines, and heavy beers to state stores. The other states do not sell beer of any kind in their stores. The Ohio and Michigan stores and agencies sell fortified wine but do not sell wine of an alcoholic content below 17 per cent. Private wholesalers are licensed to sell the lighter wines to private retail dealers and to hotels and restaurants. Virginia allows private dealers to sell wines of any alcoholic strength but these must be ordered through the state monopoly and must be sold at prices fixed by the liquor-control board. In Maine the private sale of bottled wine is not permitted, but hotels may sell spirits by the bottle to registered guests.

A more fundamental difference in monopoly systems appears in the provisions governing sale of the several kinds of alcoholic beverages by the drink. At one end of the scale, five states—Iowa, Montana, Idaho, Utah, and West Virginia—forbid sale of any alcoholic beverage, except nonintoxicating beer, for consumption on the premises. Three states—Oregon, Virginia, and Washington—permit hotels and restaurants to sell wines and beers but no spirits by the drink. The remaining monopoly states permit sale of all liquors for on-premises consumption. Among these states New Hampshire and Maine limit on-sales to hotels. Michigan, Ohio, and Pennsylvania are the most liberal, having licensed hotels and restaurants to sell all kinds of liquor by the drink on a scale equaling that of New York, California, or Connecticut.

It is seen then, that there are complete monopolies, partial monopolies, combinations of public and private sale by the package varying according to kind of beverage, and combinations of partial or complete monopoly of package sales with private sale of all or of some beverages by the drink. For a full tabulation of the scope of monopoly sale

in the several states the reader is referred to the Appendix.[4] It is enough to say here that state store systems vary widely not only in their operations but also in their basic purposes.

Control Functions

In addition to creating the state store system, it was necessary for each monopoly state to determine what licenses should be issued, in what number, at what fees, and under what restrictions; to provide disciplinary procedures for inspection and revocation; to fix penalties for violation of laws and regulations; and to determine rates of taxation and manner of collection. All these matters were generally taken care of in a single enactment known as the liquor-control act; a few states passed separate laws for the regulation of malt beverages.

The task of operating the state stores as a business enterprise was combined with the responsibility for governing the liquor traffic in all its aspects. Thus the boards and commissions have commonly been charged with making regulations in the nature of laws supplementing the control act; they have been vested with a sort of judicial capacity to conduct hearings on license matters, and in some instances with executive power to enforce the law and collect tax revenues. The exercise of these functions, in addition to those of buying and selling liquor, seemed to many to call for the traditionally constituted governmental commission. The fact that the commissions have duties other than the operation of a business is therefore reflected in their administrative organization, which does not follow the lines of a business corporation with governing board of directors and chief executive officer.

It is true, of course, that the monopoly boards have a measure of independent control over their business operations and expenditures not usually given to ordinary public administrative bodies. Yet they resemble more nearly departments of state government than commercial organiza-

[4] Appendix VII.

tions. Moreover, as we shall see, such changes as have been made in the laws tend to draw the liquor-control boards more closely into line with the regular departmental structure of state government. The management of liquor monopolies is therefore exposed to the hazards of partisan government, a situation bad enough in the case of any administrative activity, but more than ordinarily perilous when it is a business enterprise. By having the state boards deal with the policy of liquor regulation, the states missed an opportunity to establish the monopolies on a purely business footing which would tend to insulate them from political control. This lack of protection has adversely affected some of the monopolies and not others, depending on local conditions. Even the systems which have enjoyed the greatest independence are not sufficiently safeguarded against possible misfortunes through future turns of the political wheel. We shall discuss in the next chapter the way in which the monopolies may be placed on a more secure foundation.

The Commission: Appointment, Term, Compensation

A commission of three members manages state stores in thirteen of the fifteen states which have this system. In Idaho, Iowa, Maine, New Hampshire, Pennsylvania, Virginia, Washington, and West Virginia the board members serve full time; in Oregon and Vermont they serve part time on a per diem basis of compensation; in Utah one member serves full time and two part time; in Montana the State Board of Examiners, composed of the governor, secretary of state, and attorney-general, serves ex-officio as the liquor commission. The appointive members of all these commissions are named by the governor on the basis of bipartisan representation, with the advice and consent of the senate.[5] The Michigan commission is composed of five members, the governor and the secretary of state serving ex-officio with three members appointed by the governor. The Ohio

[5] In Pennsylvania the governor's appointments are made "by and with the advice and consent of two-thirds of all the members of the Senate."

board is the only evenly divided bipartisan body, having four members appointed by the governor, not more than two of whom shall be of the same political party. Two Republicans are appointed to watch two Democrats or the other way around.

Bipartisan Feature

The bipartisan idea is so deeply ingrained in the minds of legislators that they cannot bring themselves to create a new board or commission without giving recognition to party alignments. They think in terms of their own experience with the working of majority and minority party forces and mistakenly assume that the same benefits obtained in legislatures may be enjoyed by boards if a minority brake is placed on the possible political favoritism of the majority. But the political rivalry that obtains between opposed camps in legislatures loses its vigor and usefulness when it comes down to one person working against two associates in the performance of routine tasks. The contacts are too close and too personal to make partisan opposition agreeable. Men may violently oppose one another across the aisle of a senate or house chamber only to fraternize in the cloakrooms. But vigorous opposition of one against two across a small table in a board room is as distasteful as it is unproductive in dealing with administrative problems. In order to avoid unpleasant contention over political advantages that may possibly be obtained for either party, the commissioners usually agree, whether openly or tacitly, on a proportionate division of spoils. When the minority representative is a weak party man, as he is likely to be, he will take little interest in being on the alert for subtly concealed moves made by and in the interest of the majority. If the political ingredient of bipartisanship works at all it works to the detriment of good administration; if it does not work, it is of no value. The chief objection to the partisan requirement is that it emphasizes party connection in a way that leads to the appointment of persons who have an estab-

lished record of officeholding or political activity. This, of course, greatly narrows the field. Of all personal qualifications desired in a commissioner who is to inaugurate and run a state store system, the political party affiliation is of the least value. Indeed it is no qualification at all.

The Pennsylvania and Virginia statutes are exceptional in not prescribing minority party representation in the control boards. In Virginia, however, one appointee had been active in political-party organizational work, and in Pennsylvania the bipartisan principle is definitely recognized in practice even though not demanded in the law.

We do not mean to imply that all the state store systems have suffered from partisanship in the composition of control boards. Although evidences of partisanship are not entirely lacking in New Hampshire, Vermont, Virginia, and Washington, no definite harm, as far as we can determine, has come from it to the state store systems of those states. For lack of knowledge of political factors, we have formed no opinion in this regard about the Idaho, Utah, West Virginia, and Wyoming systems. Politics has certainly injured the monopoly system in Iowa, Maine, Michigan, Montana, Ohio, and Oregon, and to a lesser extent in Pennsylvania. Of these states, Iowa and Oregon, after early political difficulties, seem to have taken a turn for the better. Whatever the record in individual states for 1934 and 1935, the danger of politics in the management of liquor monopolies is an ever-present one. The prevailing schemes of organization, leaving the monopolies within the framework of the regular state governmental machinery, do not provide adequate safeguard.

Tenure of Office

Long terms of office for liquor-control commissioners promote stability of administration by making the appointed officials more independent and by relieving them of concern about reappointment. And security at the top directly affects the security of subordinate personnel. One might

suppose that the need for long tenure would have been more widely recognized in states where commissions were created to establish and conduct a liquor business than where the task was confined to controlling the private liquor traffic through the issuance and supervision of annual licenses. Yet there is little difference between term of office under the two types of control, as is shown in the following tabulation:

TABLE IV

TERM OF OFFICE OF LIQUOR-CONTROL COMMISSIONERS OTHER THAN EX-OFFICIO ADMINISTRATORS

Term in Years	Monopoly States (Thirteen)	License States (Thirteen)
Two		New Mexico
Three	Maine,[1] Michigan, New Hampshire	Massachusetts
Four	Ohio, West Virginia	Florida, Indiana, Minnesota
Five	Virginia	Delaware, New York
Six	Idaho, Iowa, Oregon, Pennsylvania, Utah, Vermont	Connecticut, Illinois, South Dakota
Seven		New Jersey
Nine	Washington	
Indefinite		Missouri, Rhode Island

[1] The term for Maine commissioners is "three years or during the pleasure of the Governor and Council."

It is noteworthy that the most vigorous and independent administrations we have examined are in Washington, among the monopoly states, and in New Jersey, under the private license system—states having the longest terms for commissioners.

But tenure of office does not always coincide with term; commissioners are frequently dismissed or forced to resign before expiration of their terms. Considered as a group, the licensing administrations have shown greater stability of membership than the monopolies. The original appointees remain in office in Connecticut, Delaware, Indiana, Minnesota, Missouri, New Jersey, and Rhode Island. On the other hand, the "mortality" of control-board membership has been high in several of the monopoly states. In Michigan, for example, the first chairman re-

signed to campaign for a national office and his successor was supplanted by still another when a change in state administration occurred; the second commissionership has had four incumbents within two years; only one of the original appointees remains. Similarly, in Ohio, Oregon, and Pennsylvania, only one of the original appointees continued in office to the end of the second year after repeal. Of the thirteen monopoly states having appointive commissions, Washington alone has had no change in the membership of her liquor-control body. Vermont has had only one change, a change due to the death of one of the commissioners; Virginia has had one change, owing to retirement of the first chairman in accordance with his announced plan to remain for a limited time.

As might be expected, security of tenure has been accompanied by freedom from major administrative difficulties and insecurity has been linked with turmoil. Where governors have kept hands off, things have run with relative smoothness; where they have intervened, trouble has arisen. There is nothing new in this; injury to administration follows political maneuvering as cause and consequence—a situation that was foretold before the adoption of state store systems and one that can be foretold for the future.

Salaries of Administrative Officers

The rate of compensation is another important factor affecting the selection of liquor-control administrators. Prior to repeal, proponents of the state store system were quite generally agreed that the salary scale should be high enough to attract men of proved business ability and managerial competence. Everyone concedes that a man who has been earning $15,000 a year directing a business comparable in magnitude to a state liquor monopoly will not take a liquor-control post for $5,000 a year with all the political uncertainties of public office thrown in. A low salary rate automatically excludes the possibility of obtaining the services of many persons whose business and profes-

sional experience would seem to make them best fitted for running a state store system. It must be admitted, on the other hand, that low salaries do not always constitute a barrier to the selection of able administrators. This is true, particularly, in the case of elderly men who are not entirely dependent upon their salaries for their livelihood.

The salaries of the members of a board are generally uniform, except that in a few states the chairman receives a higher rate than the others. The members of the Oregon and Vermont boards serve only part time and are paid ten dollars per diem. In the following table the liquor-control systems have been classified on the basis of the highest salary rate, whether it is paid to the chairman or to a full-time chief administrative officer:[6]

TABLE V

SALARIES OF FULL-TIME CHAIRMEN AND ADMINISTRATORS

	Monopoly States	License States
$ 3,500	Vermont	
4,000	Idaho, Maine, New Hampshire	Nebraska
4,500	Iowa, Washington	Minnesota, Missouri
5,000	Michigan, Oregon	Illinois
6,000	West Virginia	Indiana
6,500	Ohio	
7,000		Connecticut
7,500	Virginia	Massachusetts
10,000	Pennsylvania	
12,000		New York
16,500		New Jersey

What actually determined the salary schedule in both the monopoly and license states was the prevailing rate paid to the heads of existing state departments and commissions. When it was observed in one state that the salary given to control commissioners seemed a niggardly one and that it would not appear excessive if it were doubled or trebled, the answer came back: "As it stands it nearly equals what is paid to the governor." The cynical view, widely held, is that political favorites will seek a $15,000 public post with

[6] The Director of the Ohio Department of Liquor Control receives $6,500 per annum; each member of the Board receives $4,500 per annum.

greater energy and in greater numbers than they will a $5,000 office. Moreover, the person appointed by a governor to fill a liquor-control commissionership at $5,000 a year would be appointed by him to fill the post if it paid $15,000. "Why should the state pay a fancy salary," ran one comment, "only to get the same person who is entirely satisfied to have the job at a much smaller figure?"

An examination of salary rates discloses that the monopoly states have been more parsimonious than the license states. Pennsylvania pays the members of her liquor-control board $10,000 a year, which is the highest rate paid in any monopoly state and is more than double the rate paid by most. But the Pennsylvania scale is less than that in the adjoining license states of New York and New Jersey. In comparing other monopoly and license states, no great differences are found in the salaries paid to administrators. Although their duties, which include management of a statewide business, are greater, the monopoly officials are not being paid more than the heads of licensing bodies. Nor are salaries fixed with a view to attracting men of large business capacity.

Problems of Management

The Managing Director

Only three of the monopoly states, Ohio, Oregon, Vermont, have made provision for an executive officer charged with the full managerial duty of operating the state store system in conformance with policies laid down by the commission.[7] In Oregon and Vermont the relationship between the board and the administrator corresponds rather closely to that worked out to divide responsibilities between com-

[7] A unique variation of this arrangement is found in Utah. The law provides that the governor shall designate one of his appointees to the commission as "chairman and administrator." The chairman-administrator serves full time and the other members devote so much of their time to the commission's work as may be necessary. The salary for each member is fixed by the governor and may vary. Laws of 1935, Chap. 43, Sec. 5.

mission and manager in the city manager scheme. In both states an administrator is appointed by the commission for an indefinite term.[8] He serves full time in contrast to the members of the control board, who work part time and are compensated on a per diem basis.

In Ohio there is a curiously confused distribution of powers and responsibilities between the board of liquor control and the director of the department of liquor control. A sort of administrative trinity has been set up in the Ohio Liquor Control Act. Thus we find a Department of Liquor Control,[9] a Board of Liquor Control, and a Director of Liquor Control, with overlapping, and more or less contradictory, dependence and independence in jurisdiction and authority. The department consists of the four board members appointed by the governor and a director also appointed by the governor. The director, not the board, is the administrative head of the department; yet the director, as its executive secretary, is subordinate to the board. The board's powers are exercised in the name of the department, but the department's powers, exercised by the director, lie beyond the reach and influence of the board.

The director has complete power "to put in operation, manage and control a system of state liquor stores." He determines the location of state stores and in addition appoints and fixes the compensation of private agents for the sale of spirituous liquors. The board has no jurisdiction in these matters, but it has the power to make rules and regulations governing state stores and, by implication, it has the same power to make regulations affecting agencies. At the end of 1935 a test of authority arose in connection with

[8] Oregon: "The Commission shall appoint an administrator who shall serve at the pleasure of the Commission. The administrator shall act as manager." Laws of 1934, Act. No. 1, Sec. 13. Vermont: "The Board shall employ an executive who shall be the secretary of the Board and shall be called the liquor administrator." Laws of 1933, Chap. 17, Sec. 13.

[9] By an amendment to the law in 1935, the Department of Liquor Control was included among the state's regular administrative departments, coordinate with the Departments of Finance, Commerce, Public Works, Highways, Agriculture, Health, Industrial Relations, Education, and Public Welfare.

the establishment of agencies. The board as a matter of policy wished to bring about a reduction in the number that had been established by the director. Could the board, under its power to make regulations, effectuate this policy? A resolution was passed by the board calling upon the director of liquor control to reduce the number of agencies and to establish additional state stores on a part-time basis;[10] but the director, secure in his exclusive right to establish an agency in any location the department may deem it advisable to establish a state liquor store, had, several months later, done nothing about it. Determination of policy and its execution were in separate hands, and the board could only pass a resolution; it could not command.

The director, as administrative head of the Ohio department, has the exclusive power to buy and sell liquor, but the board has the exclusive right "to fix the wholesale and retail prices of spirituous liquor sold by the department."[11] Thus the board's only means of counteracting the director's right of purchase is by refusing to fix a price on particular brands of liquor.

In regulating the sale of liquor for on-premises consumption the director has the power "to grant, or refuse permits." If the director refuses a permit, an appeal may be taken to the board. By an amendment to the law in 1935 the board was given the exclusive right to pass on revocations.[12] By regulation the director is required to appear before the board—whether as director of the department or executive secretary of the board, one cannot say—in the role of prosecutor when appeals from his decisions are taken to the board. The board has the power to withhold payments from the liquor-permit fund to municipalities if it is of the opinion that local police are negligent in enforcing the liquor law and regulations. Yet the board has no control over the department's division of inspection and

[10] Resolution of the Board, dated Dec. 12, 1935.
[11] Ohio General Code, Sec. 6064-3, Subsec. 2.
[12] *Ibid.*, Sec. 6064-3, Subsec. 3; and Sec. 6064-26.

law enforcement which alone can ascertain the degree of local negligence.

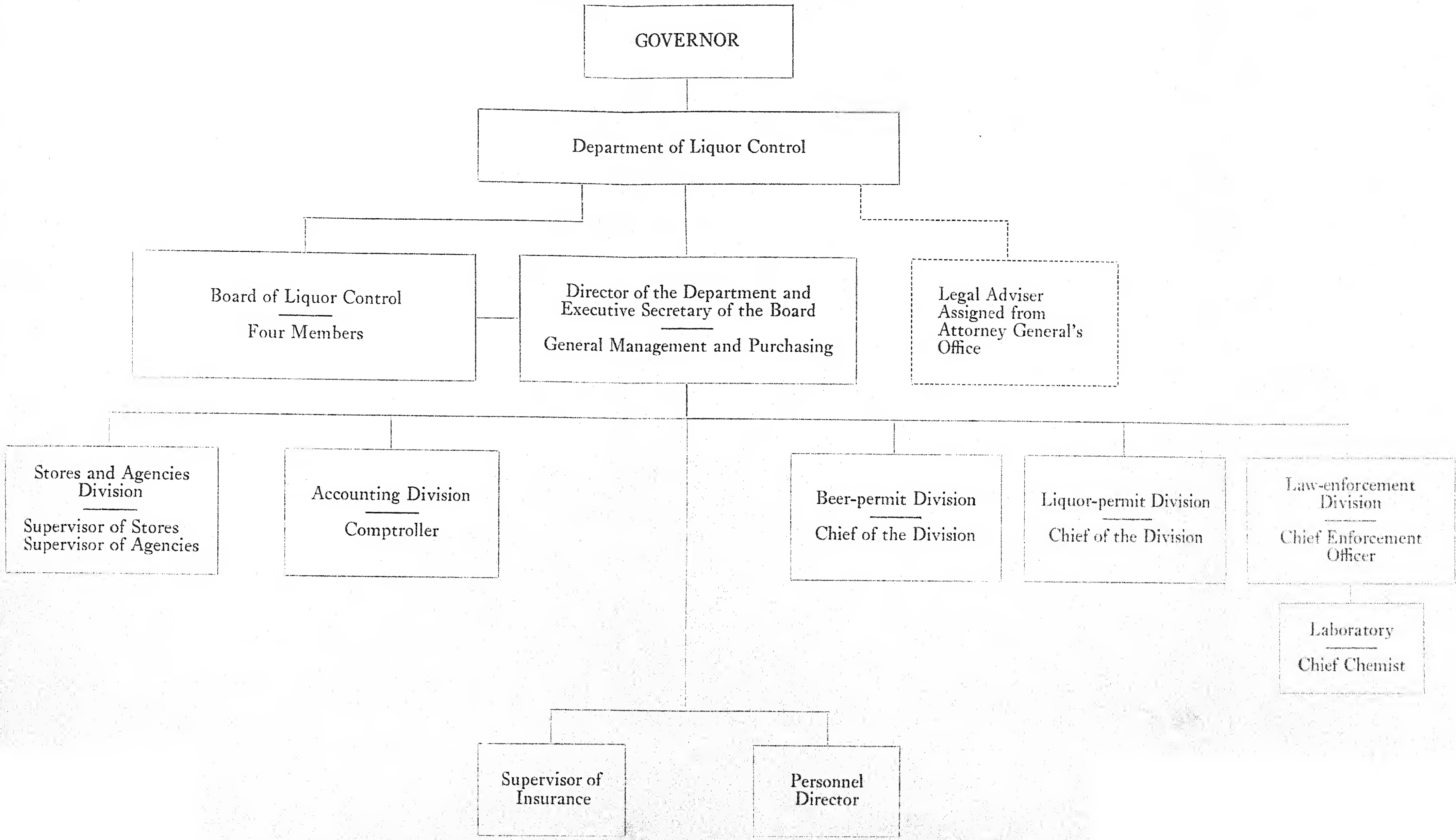
It is extremely difficult to make heads or tails of the Ohio statute. The law evidently intended to make the board a supervisory and regulatory body and to make the executive wholly responsible for operations.[13] But the lines of authority and responsibility cross in a hopeless tangle—an instance of sheer legislative ineptitude. The language of the statute reads as if the legislature had tried to say it did not wish to divest either the board or the director of any power needed to discharge the overlapping responsibilities which it had given them, but, on the other hand, it did not intend to give either the board or the director free rein in performing their tasks. In providing a scheme of checks and balances between the director and the board, the legislature went counter to the elementary principles of management. The plan has not worked smoothly and if it ever does it will be because bipartisan board members, and a partisan appointee of the governor, have ceased to have differences of opinion or to care for prerogative and authority.

Defective as it is, the Ohio scheme nevertheless points to what we believe is a sensible division of the principal functions of control in states which operate liquor monopolies. These states are confronted with two distinct jobs. One is to set up and run a business enterprise dealing with intoxicating beverages. The other is to regulate and control, in the interest of social welfare, the whole complex industry

[13] As stated in the law "the enumeration of powers of the board of liquor control shall not derogate from or prejudice any other power expressly or impliedly granted to the board by any other provision of this Act; but excepting as herein expressly provided, the board shall not have or exercise executive or administrative duties or powers," Sec. 6064-3, Subsec. 8. Again, "The director of liquor control shall be the executive secretary of the board of liquor control. Subject only to the powers and duties of the board . . . all powers and duties by the liquor control act vested in or imposed upon the department shall be exercised and performed by the director, who shall administer the affairs of the department, excepting as otherwise specified in this Act," Sec. 6064-7.

ORGANIZATION PLAN

OHIO DEPARTMENT OF LIQUOR CONTROL



of liquor sale, as it is conducted by private manufacturers and on-sale licensees. Reading the Ohio law, one cannot fail to get glimpses of the intent to recognize this division. The inference to be drawn is that compromises necessary to pass the law produced a mixture of administrative and executive functions contrary to the intentions of the original framers of the act.

Multiple-headed Management

In a large majority of the monopoly states the commission occupies itself with detailed management of state store operations. Board members purchase liquor; select store locations and every employee; and supervise the warehousing, accounting, and law-enforcement activities. Even in states where provision is made for an administrator, few matters of importance are left to his decision; everything comes to the attention of the board for approval, not at the end of a year or a quarterly period, but as a matter of daily or weekly routine.

It is a rather common practice for boards and commissions to apportion administrative oversight of special tasks among the three members. In Virginia, for example, one member handles licensing and legal affairs; another has charge of purchasing and merchandising; and the third member devotes his attention to personnel management, accounting, and enforcement. Joint action of the board is taken on certain matters after the member in whose particular field they arose has made them ready for consideration.

Participation in details of management by boards is a common fault in American government. Rarely are the members content to deal with broad questions of policy. This is especially true of small boards of three. They desire to be active, to exercise authority in an immediate and objective way. Handling details is more interesting and it gives a sense of useful accomplishment not yielded by reflection on general policies and critical review of operations and end results. Sometimes, as in Virginia, board mem-

bers arrange a division of executive labors and work harmoniously without getting in one another's way. Generally, however, confusion results from the board form of executive management. Large private corporations are not managed by a triumvirate of chiefs. True, the state store systems are not private businesses, but they should be managed as though they were. The small board is well enough suited to the task of making regulations, conducting hearings on license matters, and studying liquor control as a social problem. It is not well suited to the requirements of vigorous leadership, prompt decision, and ready correction of errors.

Selection of Personnel

No monopoly state except Ohio has a civil-service system for the selection of state liquor-commission employees. In Ohio all of the rank and file of the Department of Liquor Control are subject to the jurisdiction of the state Civil Service Commission. In two states, Pennsylvania and Utah, special provisions were made in the liquor-control acts for competitive examination of applicants. The Pennsylvania Department of Public Instruction conducts examinations for entrance to the service, but it has nothing to do with promotions and separations. These are made at the discretion of the Liquor Control Board. The Utah law provides that the Liquor Control Commission shall conduct competitive examinations for entrance into its service.

In the remaining states political favoritism ruled, or was ruled out, according to the views of the governors and their appointees on the liquor-control boards. Michigan has the unenviable distinction of having resorted openly to the spoils system. The offices were at first filled with Democrats, except for occasional and unintended errors in judgment as to who were genuine party supporters. When a change in administration occurred, 85 per cent of the original employees—according to newspaper reports—were turned out to make way for Republicans. This does not mean that

some of the replacements were undesirable; it would be surprising indeed if this were not so, considering the basis on which original appointments were made. Any doubt of the partisan nature of employment by the Michigan Commission is dispelled by a bulletin issued on April 11, 1934, to all employees, which reads in part as follows:

The Michigan Liquor Control Commission is a new Department created under the present administration, which is Democratic, giving work to a large number of people who claim membership with the Democratic party. It is suggested by the party leaders that the only way in which the party can be financed in this State is through contributions from its members. Any member of the Party who is at present employed in any of the State Departments should be willing to contribute to the support of the Party. The leaders of the Party think this can best be done by members of the Party who are at present employed in the State Departments joining the Michigan Democratic League, which is an organization that has the full support of and is sponsored by the State Central Committee. Some of the employees of the Michigan Liquor Control Commission are aligned with the Republican Party and they are not expected to contribute to the support of the Democratic Party, but if there is no objection on their part their names will be given to the Republican State Central Committee.

This amazing document was not stealthily distributed; it was printed on the Commission's letterhead and signed by the Secretary. The graceful gesture to the Republican State Central Committee was not wasted. This committee reaped a more abundant harvest later, and in return for past favors a few Democrats were held to be deserving. But political assessments were frowned upon. The Republican chairman of the commission was quoted in the Detroit *News* of August 6, 1935, as follows:

There is no politics in the commission. The employees obtained their positions through politics, but politics stops after their appointment. Why, I've got Democrats holding good commission jobs. When I was asked shortly after the first of the year to assess each employe 5 per cent of his monthly salary and turn this money over to ——,

Treasurer of the Republican State Central Committee, to make up a campaign deficiency, I refused, absolutely.[14]

According to the statute creating the Maine Liquor Commission "all appointments of individuals as employees or agents of the commission shall take effect only on confirmation by the governor and council." This would seem to be an indefensible exposure to political influences. It is a rare governor whose sympathy does not incline to those who are represented as being his friends and supporters. It was reported to one of the members of our field staff that the original employees of the Maine state store system were recommended by the county chairman of the two major political parties and that an even division of the patronage was arranged. In a few states, notably Vermont and Washington, selection of employees was made without regard to the party affiliation of candidates. The state store service, as every other governmental service, should of course be protected from the spoilsmen. But a stream cannot rise higher than its source; it is useless to make a special plea for civil service in the state stores. It can scarcely be said that there is greater need for civil service in liquor-control administration than in any other department of state government.

Salaries of Staffs

Salaries for the subordinate personnel are generally fixed by the liquor-control commission. In New Hampshire salaries are subject to the approval of the governor, and so also in Virginia when the yearly rate exceeds $1,000. The Michigan legislature reached out to control salaries by passing an amendment to the liquor-control law making them subject to legislative appropriation. Salaries of the rank and file are low. This is owing partly to the comparatively low rates fixed for commissioners, which influence the whole scale, and partly to a desire to keep down

[14] Popular disgust with the situation here disclosed may be at the bottom of the currently widespread demand for civil-service reform in Michigan.

the operating-expense ratio in order to show an attractive profit for the state stores. Despite low salaries a rather high quality of personnel was obtained to man the state stores wherever the political spoilsman was held in check. The openings came at a time when many competent persons were available because of the depression. They were willing to take salaries that were small compared to their previous earnings. Doubtless many of these will be lost to the state store system with an improvement in general business conditions.

Functions and Duties

As we have already observed, provisions governing the sale of alcoholic beverages by the package and by the drink vary considerably in the fifteen monopoly states. Private sale of wine and spirits for on-premises consumption is greatly restricted in some states and is widespread in others. Accordingly there are wide differences in the range of administrative duties given to the monopoly commissions. The commissions in Maine, Michigan, New Hampshire, Oregon, and Washington, in addition to operating state stores, issue all licenses, including those for beer, and collect all of the excise taxes. A few issue all licenses but do not collect taxes, and others have nothing to do with either beer licensing or revenue collection.

Operation of State Stores

The function common to all, except in Wyoming, is the operation of a chain of retail stores for the package sale of spirits and fortified wines. The number of stores is governed largely by population and its distribution, and to a lesser extent by variation in demand. Pennsylvania, the largest monopoly state, had 274 stores in May, 1936, or one for each 35,000 population; Vermont had 19 retail outlets, including 5 agencies, or one for every 19,000 inhabitants. Michigan maintains the most extensive retail system, with some 1,200 specially designated distributors

—private merchants who act as agents of the monopoly—and approximately 100 state stores, which together provide one outlet for every 3,700 inhabitants.

The selling end of the business is relatively simple. There are no competitors, no sales-expansion problem is involved, the goods are not perishable, credit risks are eliminated since sales are made only for cash and goods are not delivered. Once a satisfactory scheme of inventory control, accounting and audit has been put in operation, the task of selling becomes routinized and no great difficulties arise. With the aid of cash-register and business-machine companies, the control boards have rather generally installed modern business systems adequate to their needs.

The sale of liquor by the state is only an incidental means to a desired end, namely, better social control over the traffic in a commodity that is inherently susceptible of abuse. The tendency, however, is for control commissions to become engrossed in the management of the stores so that the commercial venture comes to be more of an end in itself and attention is diverted from the wider aspects of liquor control. The details of business management are time consuming yet interesting; there is a definite goal to success which can be currently measured in dollars and cents. On the other hand the watch over licensees, study of liquor taxation, and promotion of temperance, present thornier problems which are likely to be sidetracked in favor of the stores.

Purchasing

Purchases are made by the liquor-control commission in every state except Vermont, where it is done by the state-purchasing agent who purchases supplies for other state departments also. For the most part legislators were not concerned with prescribing any particular manner in which liquor purchases were to be made. The Washington statute, however, requires that no order shall be valid unless signed

by at least two members of the board,[15] and it is required further that the board's annual report to the governor "shall show in detail the price paid for all liquor purchased, showing the amount of each purchase and the price thereof."[16] Similarly, the laws of Oregon and Utah require the signature of two board members; of Virginia, the signature of the chairman or of a member authorized by the full board. The Iowa law was silent about signatures, but, following early published complaints of favoritism, a regulation was passed by the commission requiring that "every purchase order for alcoholic liquor shall be signed by all members of the commission."[17] In Michigan and New Hampshire, the practice, by agreement, is for all members to sign orders, but in New Hampshire two members of the commission may sign for reorders. The director of the Ohio Liquor Control Department makes all purchases in accordance with a form of bid prescribed by the board. The Pennsylvania monopoly has a purchasing division which prepares orders for the signature of the chairman of the board.

There is little or no danger of irregularity in the authentication of purchases. The danger lies in the preliminary negotiations which lead to the stocking of new items and in the agreements on prices to be paid for goods purchased. Fortunately, there are two automatic safeguards: first, the desire of control commissions to avoid burdensome inventories, which would result from a too diversified list of goods; and second, the universal rule prohibiting store salesmen from pushing particular brands. No opportunity is given to suggest that certain brands are "just as good and cheaper or better at the same price" than brands called for by customers. But the final safeguard must consist in the integrity and back-bone of the purchasing authorities. No

[15] Laws of 1933, Chap. 62, Sec. 67.

[16] *Ibid.*, Chap. 62, Sec. 72a.

[17] Regulation 2 of the Regulations of the Iowa Liquor Control Commission, effective Jan. 28, 1935.

triplicated system of colored order sheets, multiple signatures, or complicated bidding arrangements can serve as a substitute.

Licensing

The licensing function of monopoly commissions does not differ in its technical aspects from that exercised by control commissioners in license states. These matters have already been discussed in the two preceding chapters. The chief difference is that there are no private licenses for package sale of spirits and in some states for private sale of wine. The monopoly commission issues all licenses for on-premises sale of alcoholic beverages in eight states—Maine, Michigan, New Hampshire, Ohio, Oregon, Utah, Virginia, and Washington. Of these, the last four do not permit on-sale of spirits. In seven states beer licenses are issued by other state bodies or by local authorities.[18]

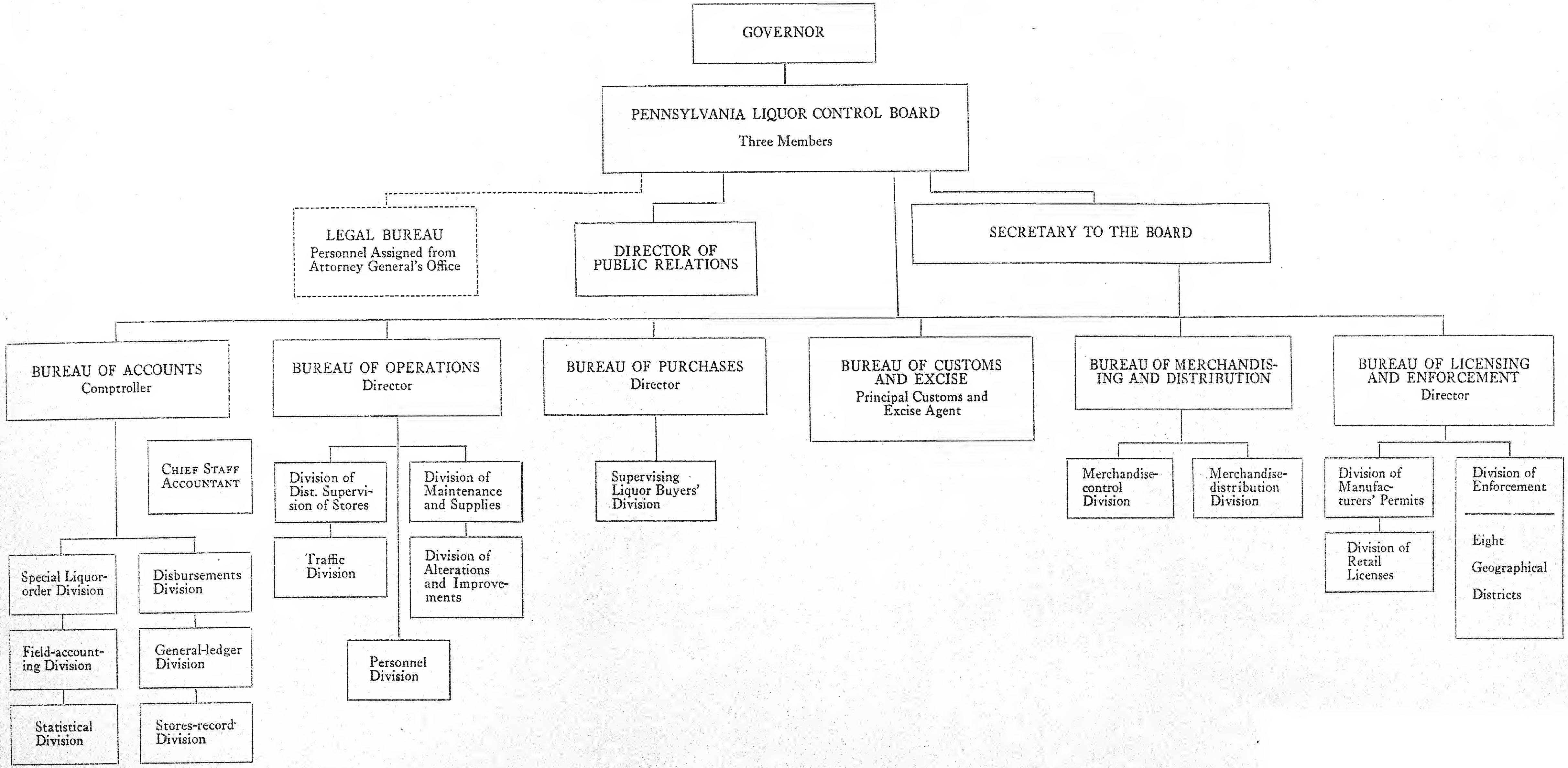
Collection of Excise Taxes

The monopoly boards collect excise taxes on beer in Maine, Michigan, New Hampshire, Oregon, Washington, and Wyoming. Collections are made by separate beer-taxing and licensing bodies in Idaho and Iowa, and by the regular state tax authority in Montana, Ohio, Pennsylvania, Utah, Vermont, Virginia, and West Virginia. No excise tax is imposed on spirits in a majority of these states.[19] However, a special sales tax is collected on goods sold by the Pennsylvania, Vermont, and Washington monopolies, and in Ohio a mandatory profit of one dollar per gallon on spirits is paid by the Department of Liquor Control to

[18] The Idaho Department of Law Enforcement; the Iowa State Beer Permit Board; the Montana State Board of Equalization; the Treasurers of Pennsylvania counties; in Vermont by the city council or selectmen of towns, designated as control commissioners, under the general supervision of the monopoly board; the West Virginia State Tax Commission; and by counties and incorporated cities and towns of Wyoming.

[19] A floor tax affecting spirits held in Pennsylvania warehouses at the time of repeal is collected by the State Department of Revenue.

ORGANIZATION PLAN
PENNSYLVANIA LIQUOR CONTROL BOARD



the State Treasurer.[20] The monopoly commissions of Ohio and Michigan collect taxes on wine sold by private dealers by means of wine revenue stamps. There appears to be no good reason why the regularly constituted state tax authorities should not be charged with the responsibility for collecting excise taxes on all alcoholic beverages.

Rules and Regulations

Liquor-control commissions in the monopoly states are universally given the power to make rules and regulations governing the sale of alcoholic beverages. These regulations have the force and effect of law. The Pennsylvania act provides that the board's regulations shall have "the same force as if they formed a part of this act." The Michigan law stipulates that the commission's rules and regulations for carrying out the act shall be "supplemental thereto." In most instances the only penalty provided for infractions is suspension or revocation of a license. In Oregon violators of regulations are subject to court action and, if convicted, are punishable "by a fine of not more than $200 or by imprisonment in the county jail for not more than three months or by both such fine and imprisonment, in the discretion of the court."[21]

Making regulations which have the force and effect of law is a modified form of legislation. There is no veto power except such as may result from court action. The right to make regulations is ancillary to the exercise of administrative discretion, and in the last analysis is founded on the commission's power to grant, or refuse to grant, license privileges and to revoke or suspend them. Regulations give precise definition to the discretionary powers which a board determines to exercise. If the law permits broad administra-

[20] By an Act aproved June 9, 1936, the Pennsylvania Legislature imposed an emergency tax on liquors sold by the state monopoly at the rate of 10 per cent of the net price. The emergency period runs to June 1, 1937. The tax is to be collected from purchasers.

[21] Laws, 1933, Chap. 17, Sec. 6h as amended by Laws, 1935, Chap. 428, Sec. 2.

tive discretion, regulations take on the character of supplemental legislation; if narrow, the power to make regulations is correspondingly limited. On the whole there have been few questionable extensions of the power to issue regulations and still fewer court actions to restrain control boards.

The most noteworthy elaboration of power through adoption of regulations has been observed in Michigan. There the commission "supplemented" the liquor-control statute to the extent of imposing a tax on wine for which no provision was made in the law. Originally the Michigan monopoly sold wine of all degrees of strength, but by an amendment to the law made in 1935, the commission was "authorized under rules and regulations prescribed by it to permit the manufacture, purchase, sale and distribution of wine containing such alcoholic content as the commission shall deem advisable."[22] This provision was evidently added so that wine of an alcoholic content up to 16 per cent, theretofore sold by the commission, should be handled by private licensees. When the change was made, the commission, by regulation, provided for "profit stamps, showing the profit of the Michigan Liquor Control Commission on wine."[23] Since the legislature made no provision for an excise tax on wine, the stamp revenue is collected as a profit which the Michigan commission might have made had it bought and sold the wine. Among the monopoly states we know of no enlargement of the administrative power to issue regulations similar to this provision, which, clearly legislative in nature, imposes a tax on wine. The explanation given by a member of the control board was that the legislature, by constitutional amendment, was empowered to establish a liquor-control commission which "shall exercise complete control of the alcoholic beverage traffic including the retail sales thereof."[24] But the Amendment specifies that

[22] Sec. 7a, added by Act 241, 1935.
[23] Regulations, Secs. 60 and 62.
[24] Amendment to Constitution, Art. XVI, Sec. 11.

"the legislature may also provide for an excise tax on such sales." So far as is known, the commission's right to levy this impost has not been challenged. The commission holds the whip hand because, if stopped from imposing the stamp tax, it could resume the monopoly sale of wine.

There are other instances in Michigan of going beyond the statute by means of regulations. For example, the law states that licenses "shall be issued to manufacturers only when 25 per cent or more of the capital stock is owned by citizens of the State of Michigan," anything beyond 25 per cent being permissive and not required.[25] By regulation, however, the commission requires that 55 per cent of the total authorized issue of stock be sold and paid for, and that 55 per cent of the total authorized stock must belong to residents of Michigan.[26] Again, the legislature provided that applications for licenses to sell alcoholic beverages "for consumption on the premises shall be approved by the local legislative body in which said applicant's place of business is located before being granted a license by the commission."[27] The intent to have local lawmaking bodies share in the responsibility of selecting licensees is clear. The regulations, however, specify that the applicant must have the approval of the chief of police of a city or town and of the commissioner of the Michigan State Police; nothing is said about approval by a local legislative body.[28]

The Michigan board has been singularly alert in using its regulatory power to aid home-state industry. An attempt was made to collect an inspection fee of $0.10 per gallon on alcohol purchased by Michigan manufacturers outside the state. This impost was declared invalid in the legal

[25] Laws of 1933, Act No. 8, Sec. 17.

[26] Regulations, Sec. 105.

[27] Laws of 1933, Public Act No. 8, Sec. 17.

[28] Regulations, Sec. 16-22. The sheriff is required to approve applications in places outside cities and towns.

contest which followed.[29] Wine profit stamps to the amount of $0.15 per gallon were required on wine shipped into the state, but only $0.01 a gallon was imposed on the products of vintners who agreed to pay Michigan growers $40.00 a ton for their grapes. The board also favored home production by lending certain wine companies money with which to pay the $40.00 rate. The loans were not all repaid and the commission resorted to the simple device of restoring the full $0.15 profit-stamp tax. This system of taxation by administrative fiat is surely not lacking in flexibility nor in capriciousness.

Although the Michigan law states that "in no case shall payment [to a specially designated distributor] exceed the sum of $1,200 per annum,"[30] the commission grants an extra allowance to those whose commissions reach $1,200 before the end of a year. A bulletin to "specially designated distributors," dated May 27, 1935, reads as follows: "Your compensation will be limited to Twelve Hundred Dollars per year, to be received through a ten per cent commission on your monthly liquor sales. After $1,200 has been paid to you an allowance of five (5%) per cent on your monthly liquor sales will be given for overhead expense." Truly the Michigan law is still in the making through administrative amendment.

In range of functions the Michigan Liquor Control Commission approximates a complete government. It taxes, passes rules for common carriers, legislates for the governance of local dance halls, grants or withholds the local government's share of license fees in accordance with its estimation of the quality of local law enforcement, operates a wholesale and retail liquor business, and conducts hearings, as an appellate body, on revocation of local licenses.

The Ohio Board of Liquor Control, on the other hand, has been restrained from even a far more modest exercise

[29] Gooderham and Worts, Ltd. v. McDonald, et al., Circuit Court of Wayne County.

[30] Michigan Laws of 1933, Public Act No. 8, Sec. 14.

of regulatory powers. In defining the duties of the board, the legislature provided that it should have the power to adopt "uniform rules and regulations governing all advertising with reference to the sale of beer and intoxicating liquor throughout the state and advertising upon and in premises licensed for the sale of beer and intoxicating liquor."[31] In exercising its power to control advertising, the board issued a regulation prohibiting all window displays and outside signs at the premises of a retail permit holder advertising a particular brand of beer, wine, or liquor, and providing that violation should entail revocation of the permit.[32] This regulation was challenged and the court held that the "legislature has declared no policy and fixed no principles or standards with respect to advertising or signs, other than the prohibition against wholesalers or manufacturers furnishing property to the retailer" and that the prohibitory regulation "is a legislative enactment and not within the province of the Board of Liquor Control as an administrative body to enact."[33] A permanent injunction against the board was allowed. This decision renders meaningless the legislature's grant to the board of the right to govern all advertising of beer and intoxicating liquor upon and in licensed premises. Obviously no regulation is needed to forbid the furnishing of property, including signs, to a retailer by a wholesaler or manufacturer, since this is specifically prohibited by the liquor-control act. It would seem that the attempted restriction of advertising by the control board was entirely consistent with the general legislative intent embodied in the liquor-control act.

The Virginia control board enlarged its power by imposing what amounted to a fine for violation of the control law and regulations. In cases of suspension of license, the offending licensee was permitted to lift the suspension

[31] Liquor Control Act, Ohio Gen. Code, Sec. 6064-3, Subsec. 1f.

[32] Regulation No. 43 of Ohio Liquor Control Board.

[33] Coadey v. Leonard et al., Franklin County Court of Common Pleas, Mar. 28, 1936.

by paying the board a stipulated sum based on the cost of conducting the investigation and hearing. This was indeed a sensible arrangement and was subsequently, in 1936, included as an amendment to the control act.[34]

Doubtless in the long run greater dangers will be encountered from judicial whittling down of administrative discretion than from usurpation of legislative powers by the boards. In granting power to make regulations, a choice has to be made between attempting to meet every situation in advance through minutely detailed legislation and giving control boards full administrative discretion to effectuate the kind and degree of control generally contemplated in the liquor statute. If the former is chosen, control boards will become little more than agencies for a negative policing of the liquor traffic; they will have little opportunity to deal constructively with liquor problems in the light of current experience.

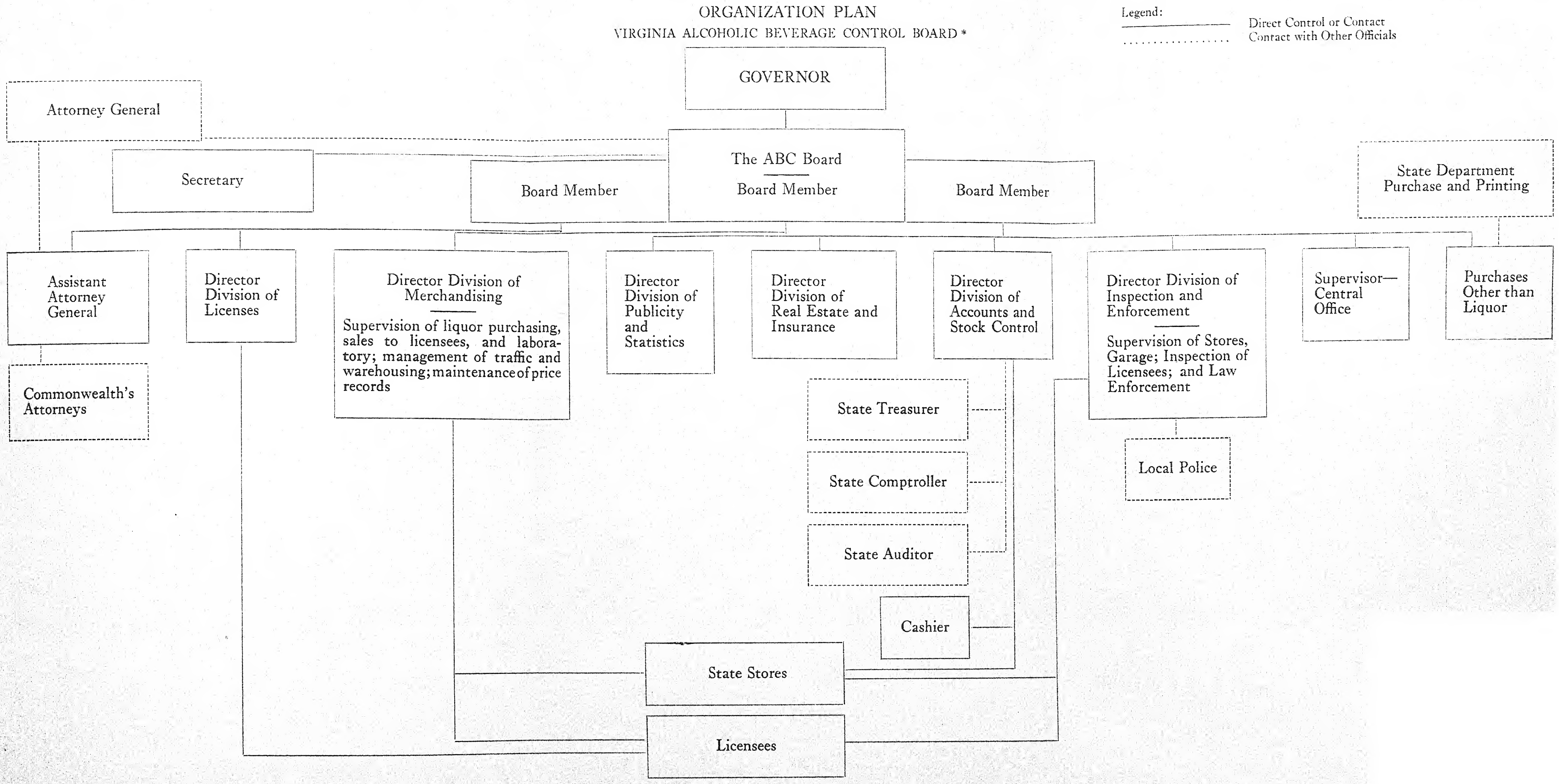
Monopoly Finances

Most of the state store systems were started on a shoestring and the burden of capitalization was placed upon private distillers and importers. The Department of Liquor Control of Ohio, for example, began business with a meager loan of $300,000 from the State Treasury, $50,000 of which went for salaries and $250,000 for maintenance and supplies other than liquor stocks. In a printed pamphlet handed to liquor purchasers at state stores the boast was made that "without one cent of capital, the Department faced the problem of purchasing on credit a sufficient stock of liquor to supply Ohioans with safe, palatable, and legal liquor." The report states that $6,000,000 worth of liquor was purchased and that in less than six months, $3,250,000 had been paid to creditors.

[34] Laws of 1934, Chap. 94, Sec. 25c, as amended by Laws of 1936. "The board in suspending any license may impose as a condition precedent to the removal of such suspension a requirement that the licensee pay the cost incurred by the board in investigating the licensee and in holding the proceeding resulting in such suspension."

ORGANIZATION PLAN

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD *



*Taken from the more fully detailed organization chart published in the annual report of the Virginia Alcoholic Beverage Control Board for the year 1935.

The sum of $2,000,000 was appropriated by the Pennsylvania Legislature to establish its vast liquor monopoly system. This was to cover payment of salaries and operating administrative expenses, purchase of equipment, payment of rentals for buildings, and cost of liquor supplies. The board then proceeded to lay in a $20,000,000 supply of wines and liquors. The distillers and importers furnished the supplies and waited for their money. After eleven months of operation the board had an inventory amounting approximately to $15,000,000, owed liquor vendors about $14,000,000, and retained net profits from stores amounting to a little more than $4,000,000, three-fourths of which by rights belonged to the distillers. Of these profits, $600,000 had been turned over to the department of welfare and $1,500,000 had been used for unemployment relief. The Michigan monopoly was started on the slimmest of resources. At the end of the first year's operation, approximately $2,400,000 was owing on liquor purchases, but $3,000,000 in profits had already been paid into the general fund of the state.[35]

The Iowa legislature appropriated the sum of $500,000, but only $110,000 of it was used. By the end of 1934 the liquor commission had a stock worth $1,630,000 and owed distillers $1,550,000. Washington provided for the issuance of bonds to raise money for the monopoly, but the bonds were never issued; license fees, taxes, and the credit of manufacturers sufficed. The Vermont monopoly was granted a small appropriation but it was never touched. The Vermont authorities, however, were not long in debt to the distillers; at the end of six months' operation everything had been paid for and $150,000 had been cleared. The legislatures of New Hampshire, Maine, and Virginia each appropriated $250,000 with which to begin business, amounts which bore a much higher ratio to scale of operations than in other monopoly states.

At the time of repeal, what with diminished tax returns

[35] From an account in the Detroit *Free Press*, Feb. 2, 1935.

and increased expenditures for relief, no state was in a comfortable financial position. The temptation, therefore, to trade on the liquor manufacturers' credit was strong, and this unfair procedure was almost universally adopted. Apparently questions of propriety and fairness were easily dismissed. The object was to get money for the state from the sale of liquor with as little inconvenience to the state as possible. The revenue motive at the very beginning made an indelible imprint on the administration of state monopolies.

State Taxes

It was generally supposed that state monopolies would not impose taxes on liquor but would get their revenue in the form of profits from sales in the state stores. A few states, however, obtain revenue in both ways. The Ohio monopoly sets aside an impost of $1.00 per gallon, as a mandatory profit equivalent to an excise tax, and then takes an additional profit from sales. Vermont imposed a sales tax of $0.10 per pint or fraction of a pint. Washington has a 10 per cent sales tax based on retail prices.

Pennsylvania did not even wait for repeal to impose excise taxes on liquor. A so-called floor tax of $2.00 per gallon was assessed against all liquor held in warehouses or distilleries between November 22, 1933, and repeal of the Eighteenth Amendment. A battle over the legality of this act ensued and the Pennsylvania authorities compromised with distillers and agreed to buy during 1934 a quantity of liquor equal to the amount possessed by the distillers which was subject to the floor tax. The price for this liquor exceeded the base market price by the amount of the tax, so that the monopoly in effect paid the distillers the money to cover payment of the floor tax. The board paid $18.00 a case for $12.00 floor-taxed liquor. Not content, however, with a special impost of $0.50 a quart, the board maintained its regular profit markup on the cost of goods purchased. Thus the consumer who purchased floor-tax liquor

paid the tax and in addition a 50 per cent gross profit on the tax. This was revenue-getting with a vengeance. The benefits were shared by the state treasury and the bootleggers, whose prospects were enhanced by the high prices of legal liquor.

It is difficult to understand why state excise levies and sales taxes have been imposed on goods which the state sells at considerable profit. With an inflexible tax and a fixed markup over cost, the monopoly boards are greatly handicapped in adjusting retail prices to stifle the bootlegger's competition. Ohio officials have taken the lead in urging a reduction in federal excise taxes on this ground but Ohio nevertheless continues to collect the mandatory dollar profit and to enjoy an ordinary profit from sales as well.

The liquor commissions of Washington, New Hampshire, and Vermont have been the outstanding exponents of subordinating profits to the interest of social control. Governor Martin of Washington, upon appointment of the liquor control board, said: "It is not the purpose of this law to encourage anything other than temperance. Unlike many other businesses, you are not expected to promote sales. Instead of promoting sale of liquor, you want to discourage it. Your function is only to make good liquor available to the people under proper conditions." The prices of liquor were kept among the lowest in the country in order to curtail the bootlegger. The legislature, however, could not resist the temptation to reap a greater harvest in liquor revenues and early in 1935 imposed the 10 per cent sales tax. This action, according to a member of the board, "has annulled our efforts to keep the consumer's cost low. Our sales have dropped and our lost customers are patronizing the bootleggers again."

Financial Reports

That most monopoly boards, mindful of the states' desire and need for revenue, are chiefly interested in the finan-

cial results of the store system is indirectly shown by the fact that a substantial majority of them do not publish any report other than a financial statement of assets and liabilities, profit and loss, and operating expenses. Virginia and Washington are noteworthy exceptions in that their reports also deal at some length with various social aspects of the general problem of liquor control.

Accounting practices vary considerably from state to state and no two profit and loss statements include identical items. Practices differ in the treatment of reserves as an expense item and in the matter of including miscellaneous income and fees with the items which go to make up the net operating profit of the state stores. For the purpose of comparison we have found it necessary to devise a uniform financial statement. In making certain rearrangements of items we have been compelled, necessarily, to violate the accounting scheme of some of the states. We have also included in the uniform financial statement revenues from all excise taxes and licenses without regard to whether or not the state monopoly commission is the collecting agency or whether the state or local governments are the beneficiaries. The total figures, however, check, even though the details vary somewhat from the figures given in the official statements. In order that the reader may consult the figures as prepared by the commissions, we have inserted in the appendix exact copies of the profit and loss statements published by the several monopolies.[36]

We think it desirable that the monopoly commissions adopt, by agreement, a uniform financial statement and make a practice of showing returns for the calendar year in addition to statements required for the fiscal year. Even though a state may prefer to abide by its existing form of presentation it would very likely prove an advantage to fill out a separate return after the uniform pattern. Preparation and distribution of such a statement would lessen the chances of error in making comparisons that will in-

[36] See pp. 260-75.

evitably be made by governmental officials, the press, and individual commentators. Legislators, administrators, and students of the liquor problem will wish to consider the complete financial data relating to taxation and licensing of beer, wine, and liquor and not merely the data for that portion of the beverage traffic which is the direct concern of the particular monopoly administrators. The commissions have a definite responsibility for reporting on their own administrative operations, but they have another responsibility, it seems to us, in reporting on all phases of the liquor traffic within their states. The problem is an interrelated one. Thus the tax on beer influences the rate of consumption and this in turn has an effect on consumption of spirits. Knowledge of the amount of revenue gained by municipalities from license fees affects decisions on whether or not they should share in state store liquor revenues and whether they may reasonably be called upon for greater cooperation in law enforcement.

Revenue Returns

The accompanying table gives a complete summary, though incomplete in details, of revenues derived from the public and private sale of all alcoholic beverages and of the cost of administering both the beer and liquor laws. The figures are impressively large and show the extent to which diversion of liquor profits from the bootlegger to the state, one of the primary aims of repeal, has been realized. Of course, the same general result has been achieved in the license states, which obtain their revenues from the package sale of liquor in the form of excise taxes and license fees rather than profits and licenses.

The greatest variation in state store returns is found in the dollar volume of sales. This is accounted for primarily by differences in demand within the several states.

The table on page 142 shows liquor sales per capita for the year 1935, with states arranged in high, middle, and low groupings.

TABLE VI

LIQUOR SALES PER CAPITA

Montana	$8.75	New Hampshire	$6.10	West Virginia[1]	$4.41
Washington	7.14	Pennsylvania	5.80	Maine	4.38
Idaho[1]	7.06	Virginia	5.29	Vermont	4.06
Oregon	6.41	Ohio	4.88	Iowa	2.46
Utah[1]	6.17	Michigan	4.74		

[1] Sales adjusted to a full year on the basis of the part-year sales record.

The Far Western states show high rates of consumption notwithstanding the fact that on-premises sale of spirits is prohibited in all of them. Doubtless one thing that contributes to this result is the difficulty of conducting organized bootlegging in states where the comparatively small population is scattered over a wide area. Moreover, they are far removed from the sources of raw materials required by the bootlegger. A smaller per capita consumption of beer in these states is another significant factor. A comparison of beer taxes and liquor sales reveals the preference for spirits in the Western states.[37]

Lesser differences are found in the ratios to revenue of the cost of goods, operating expenses, and net profits.[38] The cost of goods sold is fairly uniform, ranging on the average from 65 to 75 per cent of sales receipts. Operating expenses run close to 9 per cent, over 9 in eight of the states, and under in seven. Net profits are in the neighborhood of 20 per cent.

The highest and lowest profit ratios are found in the following states:

Ohio	27.4	Washington	16.0
Virginia	26.1	Michigan	15.8
West Virginia	24.2	Pennsylvania	13.8

It would be unfair to conclude that these percentages are indexes of operating efficiency. The percentage ratios of expense to revenue from the sales and other income of

[37] Lines 1 and 10 in the tabulation shown in Appendix VII.

[38] For details see Appendix VIII.

the retail stores in the above-mentioned six states are strikingly similar:

Ohio	8.6	Washington	8.3
Virginia	8.6	Michigan	9.1
West Virginia	10.6	Pennsylvania	9.1

The factor left out of account in dealing with these states is the price of goods sold to the consumer. Virginia and Ohio have higher markups than Washington and Michigan. Lower prices mean lower net profits and a higher proportionate cost of goods. Pennsylvania's high proportionate cost of goods, notwithstanding a high retail markup, is largely owing to the special floor tax on a substantial portion of the goods purchased. If the floor tax amounting to $3,384,754, which is really carried into the selling price of the liquor so taxed, is combined with stores profits, the profit ratio rises from 13.8 to 19.8 per cent and the expense ratio declines from 9.1 to 8.6 per cent.

It is impossible to furnish exact comparisons of state store prices with those prevailing in license states. Private dealers make frequent changes in the pricing of "specials" and some of them sell loss leaders at times to attract trade. The price of such items frequently dips below that of the same or similar items sold by the monopolies. On the whole, however, the cost of goods to the consumer is substantially lower in the monopoly states. The result is that the state store systems yield to the government revenues as great as are obtained from excise taxes and license fees in other states, but at less cost to the consumers. The tendency, however, is for the states to seek larger returns by imposing consumer sales taxes in addition to ordinary retail profits.

If state stores were abandoned in favor of private sale, and excise taxes, together with sales taxes, were substituted for monopoly profits, prices to the consumer would go up. The private dealer would have to base his retail markup on what the goods cost him, which would exceed what they cost state stores by a dollar a gallon, to take that ordinary rate demanded by the state as an example. Aside from the

tax differential the individual retailer could not purchase goods as cheaply as do the monopolies which have the advantage of buying in large quantities. License fees would be an additional expense.

The price advantage given to the consumer by the state-store system has a stronger appeal to a great number of purchasers than the possible greater convenience of buying from private stores. Although the nonusers of liquor would be indifferent to higher prices, they generally favor curtailing the private-profit incentive in the sale of liquor. Both groups therefore prefer state monopoly prices and state profits to the alternative combination of excise taxes and private profits.

Total Revenues for Liquor

When public revenues derived from all alcoholic beverages are added together, regardless of what authorities make the collections or to what governmental units the receipts are paid, the total returns in nine monopoly states and nine license states, for which figures are complete, were in 1935 as follows:

TABLE VII

TOTAL STATE LIQUOR REVENUES

Monopoly States			License States		
State	Total Net Revenue	Per Capita	State	Total Net Revenue	Per Capita
Montana	$ 1,638,402	$3.05	New York	$37,121,318	$2.95
Ohio	19,520,153	2.94	New Jersey	10,693,604	2.65
Pennsylvania	25,204,130	2.62[1]	Rhode Island	1,443,384	2.10
Washington	3,411,798	2.18	California	10,780,046	1.90
Michigan	10,211,135	2.11	Connecticut	2,913,569	1.81
Oregon	1,891,611	1.98	Indiana	5,541,772	1.71
New Hampshire	886,591	1.91	Massachusetts	7,088,351	1.68
Virginia	4,497,774	1.86	Delaware	352,371	1.48
Maine	1,206,300	1.51	New Mexico	593,034	1.40

[1] No deduction has been made for the cost of collecting Pennsylvania excise taxes. If the cost were available and the deduction made, the per capita figure would be changed by only a few cents.

Iowa and Vermont are omitted from this tabulation because figures on beer-license fees collected by their cities

and towns are not available; Idaho, Utah, West Virginia, and Wyoming are omitted because their systems were not in operation for the full year of 1935. In giving this table no allowance is made for differences among the states in per capita consumption. This is an important factor in per capita revenues, but complete figures, broken down by states, are not available. In several of the more populous monopoly states, where there are large collections from beer taxes and where the widespread licensing of on-sale establishments produces millions in license fees, the state store profits amount to not more than one-third or one-fourth of the total liquor revenue. In some other states store profits constitute nearly three-fourths of the total.[39]

It is difficult to draw any significant conclusions from the financial records of state liquor monopolies. There is a tangle of variable factors, such as the range of administrative duties, profit markups, tax rates, license-fee schedules, and differences in policy on the limitation of on-premises sale. To cite a single example of confusion, the relation of per capita cost of administration to per capita net revenue varies in a perplexing way. Vermont has the lowest cost and yet would have one of the highest net revenue rates if local license fees, for which no figure is available, were included in the total. Montana has the highest cost of administration and also the highest revenue rate, which rate, however, is only two and one-half times the cost. Michigan and Ohio are leading money-getters, having low per capita costs and high revenue rates, amounting, respectively, to five and six times the cost of administration.[40]

More important than the bald figures of expense and gain is the relation of liquor-revenue policies, as determined by taxes, prices, and profits, to the social consequences of the use of alcoholic beverages. It is impossible, however, to draw significant or valid conclusions from the limited

[39] For details of net revenue from stores and from other sources see Appendix X.

[40] See Appendix IX.

factual data at hand. The Virginia board of control stands almost alone in showing special interest in evaluating the monopoly system in terms of its effect on consumption of liquor and observance of law. It is desirable that in the future the monopoly administrators turn more often from their state store balance sheets to consider the broader social aspects of liquor control. This does not mean that the problems of business administration should be neglected. It may mean, however, that in order to shift the emphasis from profits to control it will be necessary to provide separate administrations for the liquor-selling business and for the task of regulation and social control.

Chapter Six

LIQUOR MONOPOLIES APPRAISED

HAS the liquor monopoly plan been successfully adapted to conditions in the United States? Does the experience in operating state stores indicate that the plan might well be tried in other states? Although this question is not under serious consideration in the license states where the private liquor trade is firmly established, it is sometimes raised in the few remaining dry states. It can be answered in the affirmative, confidently, only when the following favorable conditions exist: when there is a preponderant sentiment favoring exclusion of the sale of spirits by the drink for consumption on the premises; when there is an active public interest in protecting the monopoly administration against political control; when advocacy of the plan is primarily motivated by a desire for promotion of social welfare through strict control and not by a desire to get abundant revenue; and, finally, when the majority of legislators favoring the plan is sufficiently large to insure passage of a monopoly-control act without resort to political barter and compromise. These considerations point to the criteria which we are about to apply to existing state store systems.

On-sale

In *Toward Liquor Control* the state monopoly plan was advocated for those states where no permission was to be granted for the sale of fortified wines or spirits for consumption on the premises. Prior to repeal a good deal was heard of light wines and beer, and a large number of persons seemed to feel that if only these were made available

by the drink and stronger beverages were obtainable only by the bottle, the public would be satisfied. It was observed that:

> Established customs cannot be brushed aside at a stroke, and, in some places at least, it may be found necessary to provide for a closely regulated sale of spirituous beverages by the glass for consumption with meals. We return to our twofold aim in liquor control, which is to leave no legitimate need for the bootlegger to satisfy and, at the same time, to avoid stimulating the demand for liquor. If, for example, there is present an *insistent* demand for cocktails and liqueurs in a given locality, we may be sure that the bootlegger and the speakeasy will survive to satisfy it. The plain truth is that the legitimate need must be measured in terms of insistence of demand; it cannot be measured by what we might *hope* would be satisfactory. Thus measured, the legitimate need will be found to vary considerably from state to state and from locality to locality within a single state.[1]

It was proposed, therefore, that in places where the demand for heavy wines and spirits to be drunk on the premises might be strong, the public monopoly designate certain hotels and restaurants as its agents in selling by the drink goods purchased from the monopoly. The demand proved to be more widespread and more insistent than was expected. Although no state monopoly has adopted the agency scheme for on-premises sale, a number of them have licensed hotels, restaurants, and clubs to sell all kinds of alcoholic beverages by the drink.

Three monopoly states, Pennsylvania, Ohio, and Michigan, have legalized an extensive private sale of liquor by the drink. Their combined population amounts to 21,120,372 or nearly two-thirds of the total population of all monopoly states. Pennsylvania alone has a slightly greater number of inhabitants than all the eight monopoly states which forbid the on-sale of spirits.[2] Shortly after repeal

[1] Raymond B. Fosdick and Albert L. Scott, *Toward Liquor Control,* pp. 99-100.

[2] The states in which no on-sale of spirits is permitted are: Idaho, Iowa, Montana, Oregon, Utah, Virginia, Washington, and West Virginia with combined population of 9,629,662. Pennsylvania has a population of 9,631,350, Census of 1930.

the city of Detroit had 23 state stores where liquor was sold by the bottle and approximately 1,500 hotels, restaurants, and clubs where it could be purchased and consumed by the drink; Philadelphia had 32 state stores and in the neighborhood of 2,200 places licensed for on-sale.

If allowance is made for difference in population, Pennsylvania is found to have a private license system for on-sale that is nearly as extensive as New York's. There are fewer state stores in Pittsburgh than there are privately owned package stores in Buffalo, but as one goes about the streets of the two cities liquor selling seems less in evidence in Buffalo than in Pittsburgh. In the latter city licensed restaurants and hotels make more of their window displays of liquor; cocktail hours and bargain-day "specials" are more flamboyant in their appeals to the public. Philadelphia can match anything that New York City has in the way of drinking establishments. These range from the sophisticated cocktail rooms and night clubs at large hotels to the frowsy "gin mills" located on side streets where cocktails are unknown, diluted highballs are rare, and "slugs" of straight gin or whisky are sold for ten or fifteen cents a drink. If Pennsylvania should change from the monopoly to private license we venture to say that no significant change in the drinking habits of its people would result, and, except for an increase in the number of smaller package liquor stores, no change in the outward appearances of the liquor traffic would be observable.

In our opinion four states have done well under the monopoly plan. They are Washington, Virginia, Vermont, and New Hampshire.[3] Of these Virginia and Washington make no provision for on-sale of spirits but permit the sale of wine and beer by the drink. New Hampshire permits the on-sale of spirits in hotels and Vermont extends the right to hotels and restaurants, but in both states the num-

[3] West Virginia and Utah are entitled to consideration for this preferred group but at the time we wrote their systems were only a few months old—a period too short for judgment of them.

ber of licensed places is small, even in proportion to population, and the restrictions rigid. The private sale is so limited that the states do not appear to lose the advantages of monopoly control. There are no large cities in New Hampshire and Vermont, and except for the summer-tourist season there is no great demand for on-premises consumption of liquor.

The number of speak-easies reported to exist in such cities as Seattle, Spokane, Richmond, and Norfolk indicate that Virginia and Washington are in a more difficult position than these New England states. Virginia and Washington have made an honest effort to see whether or not their citizens would be content with on-premises consumption of the lighter alcoholic beverages in public places provided they could obtain all they wanted of bottled spirits. But drinking habits are not changed at state lines. Many persons in Virginia and Washington are dissatisfied with the on-sale restriction and some of them flout the law by patronizing speak-easies. They contend that it is absurd for the state to deny a person the right to drink an ounce and a half of spirits diluted in fruit juice or carbonated water before a meal in a public dining room when there is no restriction on his buying a pint of liquor and drinking it straight from the bottle after he leaves the state store. There is no denying the force of this contention, although to pose it in this exaggerated way is to lose sight of the difficulties encountered in permitting private sale of the heavier intoxicants for consumption in places of business which in many instances take on the character of saloons.

It is seen that the public policy with regard to on-sales has a profound effect upon the success of the state store system for packaged goods. On the basis of experience thus far obtained, it seems fair to conclude that the chief social benefits of the monopoly system are more or less negated wherever liquor is sold extensively by the drink in restaurants, hotels, taverns, and saloons. In other words, the on-sale of spirits by private license is on the whole

inconsistent with the aims of a public liquor monopoly, the major purpose of which is to eliminate the pressure of private incentive to sell. When the basic advantage of a monopoly system is lost through permission for on-sale, the type of sale which creates the greatest difficulties, what ground is there for public sale by the package? Why hazard the risk of putting the state into the liquor business if the chief objective is to be abandoned through the on-sales policy?

Agencies for the On-sale of Spirits

In spite of the inconsistency of combining public sale of liquor by the package with private sale by the drink, some of the monopoly states are none the less confronted with the task of finding a practical method to provide in certain metropolitan centers on-sales which will not be completely at variance with the spirit of the monopoly plan of control. The Washington State Liquor Control Board has given this matter serious consideration. A plan, rejected by the legislature, was devised for the appointment of agents, presumably owners and managers of hotels and restaurants, who would be "deemed employees of the board and shall be subject to removal or discharge in the same manner as any other employees of the board." It was not intended that the agents should derive large profits from the sale of spirits. Thus, the bill provided that the board's agents should account for the liquor sold by the glass in "such sum as shall be the equivalent to the retail price of such liquor by the original package at the state liquor stores, plus an additional sum to be determined by the board which sum shall be uniform for all agents." It was further provided that "liquor in possession of the agent shall at all times remain the property of the board" and that it should be subject to removal on the board's order.

This proposal is a sensible adaptation of the monopoly plan, one that harmonizes with its basic aims. But it would be extremely difficult to administer the scheme, for the ap-

pointed agents would chafe at price-fixing and strict limitation of their profits. If once the door to private selling were left ajar, efforts to open it wider would be ceaseless. We think that the plan is worth trying by a strong, politically independent board in a state where the demand for on-sale in a few centers appears to be especially insistent. It is clearly preferable either to countenanced law violation or to a hybrid system with public monopoly of package sales and private license for sales by the drink.

Quality of Administration

A second criterion to be applied to monopoly systems concerns the caliber of the administrative board, its range of powers, and its freedom from political pressure. On the score of administrative independence the record of monopoly systems has been poor. The sinister influence of politics has intruded upon each of the three largest systems. The first Pennsylvania board was appointed under a Republican state administration. With a turn of the political wheel the Democrats took office and promptly instituted a legislative inquiry with every appearance of trying to discredit the board. Although the investigation revealed no venality and nothing that was not already well known about early mistakes in the purchase of liquor supplies, the sound and fury continued until two of the original board members were induced to retire from offices they did not wish to keep under the harassment of political baiting. In Michigan a Democratic administration inaugurated the monopoly system and took full advantage of the opportunities for political patronage, only to be ousted by a Republican administration in the sweeping turnover in personnel which was indicated in the preceding chapter. In Ohio one faction of Democrats succeeded another with resulting changes in the personnel of the board. Only one of the principal division heads survived the change of administration. The Iowa, Oregon, and Maine liquor-control boards have been involved in political turmoil. The nonofficial proponents of

the monopoly plan in these states are frankly disappointed, but cling to the hope that political influences may by some good turn be eliminated.

Strictly speaking, no one was qualified by experience for appointment as a control-board member. No one had managed a liquor monopoly, nor had anyone been engaged in the state-wide regulation of any phase of the liquor traffic. A good many of the appointees were lawyers, a number of whom had held other public offices by appointment or election. A third of the members might be classified as businessmen, but with two or three exceptions their background of business experience was not impressive. When a leading industrialist of Maine was asked to comment on the special fitness of control-board members for the task of running a state store system he said "no one but a governor would have selected them to run a business." The appropriateness of this remark is by no means limited to Maine. The public has been extremely lethargic about liquor control as a whole and has not taken the trouble to demand that exceptional men be appointed to control boards, and that politics be rigorously barred. Unless these requirements are met, however, through force of public opinion, a state monopoly will run an uncertain and hazardous course. This force has yet to be generated and the prospects on the whole are not encouraging.

Revenue or Social Control?

What has been the attitude of monopoly states in the matter of getting revenue from liquor? Has revenue or social control been uppermost in the minds of legislators and administrators? A state is of course entitled to gain a profit from its business of selling liquor. The question is whether desire for revenue overshadows all else. We are afraid that in most instances this is so. It is not always easy, however, to distinguish between apparent exploitation and getting legitimate financial returns.

Greed for liquor revenue is threaded through the whole

political system, from the national government in Washington to the municipality whose aldermen clamor for license fees. It is as much in evidence in monopoly states as in others. The League of West Virginia Municipalities recently published a scathing attack on the state monopoly system because cities were not given "their fair share of liquor sale profits." If this is not done, the League declares "it will lead member cities in a vigorous state-wide movement which will result in exercising local option to oust state stores and seek substitution of a licence system shared by municipalities."[4]

When we consider as a criterion the attitude of state monopolies toward revenue we find them on the whole wanting. Administrators quite humanly take pleasure in the success of their operations as reflected in profits and in public approval of the system, which latter seems proportionate to the financial blessings which accrue to the states from their liquor stores. Frequently we have listened to criticism of state monopolies by persons who, after pointing out defects, conclude by saying, "But the stores will remain so long as they bring in the money as at present." A fundamental fallacy is embodied in this kind of evaluation, because it is possible, within limits, to derive equally large revenues from excises and fees under a private-license system.

Public Reaction to Monopolies

Another standard by which a state liquor monopoly may be judged is the measure of public satisfaction with it. Does the monopoly plan seem to be gaining or losing in public favor? There is as yet no conclusive answer to this question. The monopolies are on trial; even the best of them are under a faint shadow of suspicion. The public is prone to criticize any governmental administration, and the state's liquor business is not excepted. There are frequent com-

[4] From the Bulletin of the West Virginia League of Municipalities, Sept. 18, 1935.

plaints and fleeting rumors. Things may go bad at any time, reasons the cautious observer; it is best, he thinks, to withhold judgment for a while. It is significant, however, that in no state has there been any great popular discontent with the system, no uprising of disappointed citizens threatening to throw it out. The general public has not turned against monopoly even in Iowa, where the severest criticism has been leveled at the board, nor in Michigan and Ohio, where political turmoil has been greatest. Equally significant, however, is the fact that in no state having the private-license system are there any signs of an active interest in changing over to the monopoly form of control. The advantages of state stores are not strikingly revealed. There appears to be, when they are compared with neighboring license states, no margin of general sobriety favoring the monopoly states, no clear indications that there is less bootlegging, and no marked advantages in revenue returns. On the other hand, it is pointed out that there is always the threat of ruin through politics for a retail business operated by the state.

Within the monopoly states there are, of course, active friends and foes of state stores, but they tend to neutralize each other's influence so that the great body of persons who are largely indifferent determine the public's reaction. The population of a monopoly state may perhaps be divided into six groups according to their attitude toward state sale of liquor.

The first group, proceeding from the favorable to the unfavorable point of view, is composed of persons who definitely favor state monopoly on principle. They believe in keeping down the private-profit incentive in the sale of liquor. This group includes many persons who do not use liquor. Some others regard the small number of inconspicuous stores as a desirable feature. Still others are pleased that they can purchase liquor at a reasonable price from the state with assurance of getting what they order and not a bootlegged substitute.

A larger group, mildly friendly or mildly critical as the case may be, withhold their judgment and wait upon a longer trial. Their interest in the plan can be awakened if someone takes the trouble to do it, but they will not of their own accord either fight actively for the monopoly or against it.

A still larger group are frankly uninterested in the problem of liquor control. They take state stores as a matter of course. They get what they want easily enough if they want anything at all and there is an end to it. In this group are the persons who have said to us "really we cannot give you any information as to how the state stores are working; we haven't paid any attention to them. They seem to be doing all right."

Then there is a fair-sized group including persons who sometimes become irritated over inconveniences suffered in dealing with the state stores. Their favorite brand of sherry or brandy is not carried in stock, or they wish to purchase straight alcohol which is not available. The state store salesmen, they say, have no knowledge of the business and never will know anything about liquor or wine, especially wine. In this group also are persons, fewer in number than at first, who object to seeing the state in business. They point to conditions in private-license states which in their opinion are better than in their own state.

A more actively hostile group is composed of those who would engage in the liquor business if it were not for the state monopoly. These are the would-be wholesalers, package-store retailers, and druggists. In states permitting on-sale, most of the licensees object to being forced to buy only from the state. They feel certain that they could purchase to better advantage from private wholesalers, that they could enjoy normal credit arrangements instead of buying for cash, and that they could have goods delivered to them. These persons always stand ready to sink the knife into the state system. As time goes on they are per-

haps losing hope of overthrowing the monopoly, but they nevertheless must be numbered among the irreconcilables.

Equally irreconcilable are the intransigent drys who compose the sixth group. They abhor the sale of liquor by anybody, but are especially opposed to having their state government sell "poison" to the people. They fear that sale by the state will make for the permanence of legal liquor. Moreover they dislike having the state lend dignity to the liquor business. Many of them insist on referring to the state package store as a "saloon." The extreme drys prefer to see liquor sales in private hands, nourishing the hope that if given enough rope private dealers will hang themselves.

The press in monopoly states tends to follow one or another of these groups, but it is chiefly influenced by evidences or rumors of political favoritism and administrative mismanagement. Definite campaigns against the monopoly have been inaugurated by certain newspapers in Pennsylvania, Ohio, Iowa, Michigan, only to die down when changes in management have occurred or when the public has shown its indifference to the criticisms. The press is not always a disinterested party, inasmuch as the prospects of advertising are involved and there is less of it in monopoly states because private retailers are barred.

It will be seen from this cross section of public opinion that the state monopoly system has few friends. But the system will need the active support of many friends if it is to withstand the dangers of politics and the injuries resulting from ill-conceived legislative changes. Only in Ohio has a definite attempt been made to enlist support for the monopoly. Mr. Lockwood Thompson, upon his resignation as vice-chairman of the Ohio Liquor Control Board in 1935, became the guiding spirit in forming The Ohio Friends of State Monopoly. An announcement of the incorporation of this organization read in part as follows:

> The distillers are always organized; the permit holders (licensees) in many sections of the State have banded together, and it is time

for the friends of state monopoly to assert themselves in turn. State monopoly is a social experiment and, as such, it deserves encouragement. The founders of the present Association believe that there is a distinct need for a voluntary organization of private citizens to protect the system and to emphasize its social purpose.

We know of no other place where organized support of the basic aims of the public monopoly system has been promised.

Advantages of State Monopoly

What benefits are to be gained from state liquor monopolies that cannot be obtained in equal measure through strict regulation of a private-license system? The principal advantage is that it reduces, even though it does not entirely eliminate, the private stake in liquor selling, and this in turn lessens the opportunities of private business to stimulate sales to the consumer. The state monopolies do not multiply the number of retail stores in order to tap every marketing possibility; they do not advertise their business nor do they attempt to entice purchasers with bargain specials, although they have been known to close out slow-moving items at reduced prices. They do not as a rule keep stores open for long hours or render accommodating services, such as making deliveries, in order to help sales. In short, the state monopolies do not attempt to build up their volume of business.

The private dealer stands to gain from making a prohibited sale, whereas the state store employee has nothing to gain and everything to lose in doing so. The private merchant whose volume of business is unsatisfactory will scarcely draw so fine a line in selling to partly intoxicated persons and to minors as will a state store salesman. Under the monopoly plan there is never an oversupply of package liquor stores, bootlegged goods are never sold, and the consumer is fully protected against misrepresentation of the tested legal goods which he purchases.

Potential Aid to Law Enforcement

Where on-sales are permitted, the exclusive right of monopoly authorities to sell liquor at wholesale to private licensees furnishes an opportunity to thwart the bootlegger that is not found in license states. A careful analysis of sales would disclose in certain communities a correlation of increased purchases with intensive inspection activity. This would lead to an accurate spotting of licensees who serve as legally screened outlets for the illicit producers' goods. Until now, owing in part to the short length of time covered by sales records, little has been done in this direction. However, it may be supposed that with the accumulation of comparative records the sales index will be fully utilized. When retail outlets are lost, many bootleggers will quickly fail; they can scarcely survive by peddling their inferior products by the bottle directly to consumers.

Price Control and Consumption

A theoretical advantage of state monopoly is the control over retail liquor prices which can become an important factor in contributing to the general social welfare. Low prices bring about increased consumption of liquor; high prices contribute to bootlegging; and medium prices may possibly encourage both consumption and bootlegging. Prices also affect revenues by increasing or decreasing the volume of sales. In some states a fixed percentage of retail markup is specified in the liquor-control act. In other states the control commissions may, within a maximum limit, establish the markup according to their discretion. They have quite generally taken satisfaction in offering liquor at cheap prices which undermine the bootlegger and so have lowered retail prices following reductions by manufacturers. But it is dangerous to rely too heavily on cheap liquor as a check upon the bootlegger to the neglect of the more direct method of vigorous criminal-law enforcement.

Apparently, monopoly administrators have been little concerned with increases in consumption that result from

low prices. We know of no instance when prices have been raised and law-enforcement activities increased in order to restrict consumption. In order to make the best possible adjustment between the opposed ends of discouraging excessive consumption and driving out the bootlegger it is essential that monopoly boards possess and exercise the right to fix a sliding scale of liquor prices. They should be content to let the profit ratio fall where it will. When decisions on prices are made in order to increase the state revenue, one may be certain that the monopoly authorities are neglecting the more important considerations of social welfare. The crucial test, not yet come to our notice, would consist in fixing or maintaining a price level designed to place a check either on bootlegging or consumption even though it might be expected to diminish profits.

Private Wholesaling Excluded

The private wholesaler and the wholesaler-rectifier are eliminated in monopoly states. Generally speaking it is the unscrupulous wholesaler and rectifier and not the leading manufacturers who give the most trouble in the liquor business. Not all of them are unscrupulous, but severe competition has told heavily on the wholesalers and some of them have found ways to extend excessive credits and advertising allowances and other "clandestine cash rebates," as they were called in a report by the Third Regional Board of the Alcoholic Beverage Wholesale Code Authorities.[5]

The president of an association composed of New Jersey wholesale distributors of liquor stated on October 31, 1935, that "the small retailer frequently opens business on a shoestring, obtains his supplies from us on credit, resorts to shady business in a desperate effort to keep open, and finally fails."[6]

The state store systems have no wholesalers and rectifiers working behind the scenes to create as many retail outlets

[5] See Bowne's *Wines and Spirits*, Nov. 15, 1934, p. 49.
[6] The New York *Times*, Nov. 1, 1935.

as possible, regardless of whether or not they can survive on the volume of prospective legitimate business. We believe that the fewer dealers in the liquor business between manufacturer and retailer the better conditions of sale will be. And the fewer liquor dealers there are in a state the less powerful will be the legislative liquor lobbies, whose members, always and everywhere, are motivated by the desire to increase sales and consumption. The monopoly system has a clear-cut advantage in respect to limiting private business interests in liquor.

The most frequently mentioned advantage of the state store plan, however, is that it gives consumers assurance that the goods they purchase are taxpaid, pure in quality, and exactly as represented in every particular. From the buyer's point of view this is a good feature; it is about the only one mentioned in Pennsylvania. But this kind of protection to the consumer hardly justifies the state in going into the retail liquor business. The consumer can be equally well protected under a state wholesale monopoly.

Preferential Treatment of Wine Sales

Another theoretical advantage of state monopoly is that it is in a position to favor the sale of natural light wines. They can do this by selling wine at a lower margin of profit than whisky, gin, and rum. But monopolies have generally failed to take advantage of this opportunity. The state of Washington is a notable exception. Domestic wines, purchased in bulk and bottled by the monopoly, are there being sold for one dollar a gallon. According to Admiral Gregory, chairman of the Washington Liquor Control Board, "cheap wine meets the need of those who prefer wine to whisky but who cannot afford to pay the usual wine prices." The truth of this statement was evidenced when California claret was offered at one dollar per gallon and the sales jumped, but without affecting the sale of other wines. Early in 1935 the Pennsylvania board made a feeble gesture to favor wine by passing a rule permitting its sale in gallon bottles and by

lowering the retail markup from the regular 50 per cent basis to 40 per cent. However, these measures are said to have had no appreciable effect on sales. Instead of further reducing the markup, the Pennsylvania board took the position that it was up to the vintners to do more by cutting their prices. Most monopolies maintain a high retail markup on wines.

The monopoly boards keep anxious watch over the ratio of gross sales to their operating costs. They are unwilling to lower their markup on wine because, as they point out, the overhead in handling wine is as great per case as in handling spirituous liquor. This reasoning clearly reveals that profit motive takes precedence over any social advantage to be gained by pushing the less intoxicating beverages.

The Temperance Factor

Monopoly control not only limits private interests which are forever seeking increased sales and liberalization of regulations, but also reduces the force of selfish resistance to the progress of temperance-education movements. It cannot be said that state monopolies have been positive forces in the promotion of temperance; they have been too busy learning the fundamental lessons of liquor merchandising and too unwilling to sell light alcoholic beverages at a small profit. Private business interests will go no further in encouraging temperance than seems expedient from a long-range business point of view. But monopolies have no choice other than to accept with approval any progress toward temperance which public opinion may register.

Weaknesses and Suggested Remedies

The greatest dangers which threaten the *administration* of state monopolies are (1) the spoils system of employment which is likely to permeate the administration, destroy efficiency, and make a political football of the entire system; (2) corruption in making purchases or favoritism which is in reality a modified form of corruption, and (3) the

combination in the hands of a single administrative body of the incompatible functions of operating a liquor business and of exercising control over the liquor traffic through the licensing of private dealers and the imposition of restrictive regulations applicable alike to the dealers and consumers.

Liquor Purchases

Difficulties in determining what liquor to buy, from whom, and at what price, complicate the purchasing task. It is here that a state monopoly is most vulnerable to abuses. The problem is to choose a limited number of brands from the abundant offerings made by scores of distillers and wholesalers. The competition among vendors is of the keenest sort. It is aggravated by the abnormally large productive capacity of manufacturing plants. According to Dr. J. M. Doran, director of the Distilled Spirits Institute, the liquor industry has a productive capacity eight or ten times in excess of the present rate of consumption.[7] State monopolies are the largest single purchasers of liquor and it is not surprising that sellers exert the greatest efforts to place their goods upon the state store shelves. They employ state representatives who are thought to have influence with the commissioners, they try to enlist the aid of newspapers by the promise of fat advertising contracts, they employ agents, commonly called "missionaries," who persuade on-sale licensees to demand that the state stores stock their goods, and finally, they overlook no opportunity of enlisting the aid of party politicians. Who is to deny them the high privilege of making a campaign contribution if and when sales are made to the state? Who is to deny politicians the right to offer their opinions about the merits of goods offered to the monopoly? Ugly rumors about the use of political contacts by salesmen are frequently heard. It has not been our part to delve into charges of this nature and we have no evidence to show that political intermediaries have been

[7] From a statement of Dr. J. M. Doran at a hearing held by the Federal Alcohol Control Administration on June 26, 1934.

compensated for using their influence with monopoly boards or purchasing agents.

The task of purchasing liquor places a great strain upon monopoly administrators. They are criticized, browbeaten, and threatened by persons whose offerings are not accepted. Disgruntled salesmen do not hesitate to start whispering campaigns intended to reflect on the fairness, integrity, and business judgment of monopoly authorities. The energies of control boards are wasted in ceaseless efforts to combat the underhanded practices of desperate vendors, and to see that bribes and gifts are not made. This is particularly true for the larger systems where the sales prizes are greatest.

Consignment Sales to Monopoly

Are there any administrative devices by which venality in the purchase of liquor may be guarded against and the risk of bad judgment lessened? Two ideas have been suggested. One is that the monopolies open their stores to the receipt of goods on consignment from any distiller or importer, subject only to laboratory tests of purity, proof, age, etc. The other suggestion is that monopoly officials adopt the policy of refusing to deal in person with any producers or their agents but handle all purchases through correspondence.

Briefly, the consignment scheme consists in accepting the goods of any seller who is willing to consign them to the monopoly and to wait for his money until the goods are sold to consumers. If the goods fail to move, the consigner has the right under this arrangement to withdraw them. Consignment selling is generally regarded as a bad business practice. It is forbidden, indeed, in the federal alcohol-control act of 1935 for all kinds of alcoholic beverages in interstate or foreign commerce.[8] But consignment sales to state liquor-control boards would not injure any federal interest and the prohibition by federal statute probably could not be enforced against the states.

[8] Federal Alcohol Administration Act of Aug. 29, 1935, Sec. 5d.

Under this arrangement manufacturers would bear the burden of continuously furnishing stocks of goods to the monopoly on credit, although fast-moving, established brands would be paid for without delay. We have already condemned the monopolies for taking advantage of the producers' credit during the first year of operation. But the situation was different then in that proceeds from the sale of goods were used to buy equipment and some of the profits were turned over to the state before creditors were paid for their goods. There is a further difference. Originally, the monopolies, under the outright purchase plan, were in the position of *seeking* goods with which to stock their stores, whereas going monopolies, operating on a surplus, would not acquire stocks for the purpose of obtaining credit for which they would have no need. On the contrary they would be more burdened than benefited by acquisition of new stocks. Credit would not be sought by the monopolies but would be willingly offered by producers in the hope that their goods would eventually win the consumers' favor.

Are there special reasons why the consignment scheme should be adopted by state monopolies? Before attempting to answer this question, let us examine more closely the true function of a public liquor monopoly. When the state engages in the sale of liquor, it is for the primary purpose of regulating *distribution* of goods to the consumer. It has no interest in the manufacture of liquor and it has no interest, or should have none, in creating a consumer demand for these goods. Its part in the business is to see that an *unstimulated* demand is adequately supplied. This sole function can be fully performed without undertaking either to determine the kind of liquor that shall be produced or to determine what the consumers want. It is the responsibility of the manufacturer to produce what is wanted. To fulfill its function, the monopoly need only distribute the goods which producers have to offer to consumers.

The question at once arises, would not the monopolies

be swamped with goods and be forced to maintain enormous warehouse and retail stocks? Doubtless there would be initial difficulties in handling many slow-moving brands. But in the long run there would be an automatic solution of this problem because producers would not continue to pile up slow-moving goods for which they were not being paid. In order to curtail possible abuses of the warehousing privilege, the consignor should be required to pay a stipulated warehousing fee or service charge.

Limitation of Consignment Privilege to Distillers and Importers

Today there are countless brands of liquor offered for sale by large and small distillers, by rectifiers and wholesaler-rectifiers. These numerous brands do not represent actual differences in kind and quality of liquor. A score of whisky brands may come from one day's production of a single large still. The real difference is in the name on the labels. These are multiplied to serve a market created by announcing and advertising new brands in some way appealing to bewildered consumers. In operating on a consignment basis a state monopoly should buy only from distillers and importers, and should not open its warehouses to rectifiers. The latter do not make liquor but buy their supplies from distillers and then cut or blend to produce their own brands. There are some four hundred rectifying plants in the country which are quite independent of distilleries. A substantial proportion of them are not doing any real rectifying. Mr. Harold N. Graves, Assistant to the Secretary of the Treasury, declared at a Congressional hearing that "the principal occupation [of rectifiers] is buying spirits in bulk form from the distillery, reducing the proof, and bottling straight without rectification."[9] The manufacturing distiller can produce all the types and brands of liquor wanted by consumers. There is enough competition

[9] Hearing before Ways and Means Committee on H.R. 8539, June 19, 1935, p. 38.

among distillers to insure this. The independent rectifier's business can be regarded only as a superfluous addition to an overcrowded industry.

The advantages of the consignment system would be to place all distillers and importers on the same footing and thereby eliminate the sales-pressure nuisance. It would do away with most of the danger of corruption that always threatens to undermine purchasing authorities. Moreover, this scheme would retain public control of retail profits, which is the principal aim of state monopoly, and at the same time bring into full play private competition among producers to the advantage of the consumer. The chief objection to the scheme, as we see it, is that once a producer had consigned his liquor to a monopoly, he would move heaven and earth to work up a consumer demand for it. This difficulty would only be overcome by imposing uniform restrictive regulations governing the advertising of liquor. It might also be that the number of items consigned would overtax the capacity of retail stores and in other ways create too great administrative difficulties.

The other method of counteracting the pressure exerted by liquor sellers would be to deny all personal interviews with salesmen and good-will contact men. This would mean that all offerings would have to be made by letter. If a new brand is offered or if the blend and age of an established brand is changed, it would be necessary to submit a sample for laboratory analysis and taste testing. Is there any information required of producers that cannot be clearly and concisely set forth in a letter describing the product and giving the price at which it is offered? We are convinced there is not. It would be an immense relief to harried administrators if they could negotiate purchases by correspondence, and it would put a quietus on groundless rumors of favoritism if the description and price of every lot of liquor offered for sale to a monopoly were put down in black and white. It should be observed, however, that neither this nor any other method will automatically solve

the liquor-purchasing problem; its solution in each instance will rest on the honesty and independence of the purchasing authorities for which there is no substitute.

Combination of Incompatible Functions

Let us now examine the disadvantages of combining in the hands of a single board the widely dissimilar functions of conducting a mercantile business and supervising a private license system. The performance of one task distracts from the other, and, in the resulting conflict of interest, the purely business affairs generally take precedence over control of licensing. This is especially true in the more populous states where the business is conducted on a vast scale.

The business matters claim first call, since delay may interfere with the smooth working of the state-wide system. The problem of considering whether Jones shall receive a license in a community that appears to have an adequate supply of licenses already pales before that of buying the liquor which will later be sold to Jones if he gets his license, or to the others already in business if he is refused. In a hearing on the revocation of Brown's license the board may have to deal with a delegation of citizens who charge that he is a scoundrel, and then with an equally forceful group who affirm that he is the soul of honor and who imply that he is being persecuted for political reasons. While this hearing is in progress the commissioners may be making mental calculations on the cost of buying a shipment of foreign wine, or of opening certain new stores, remodeling a warehouse, installing a new accounting system, or anything else. When they make notes it is likely to be a scribbling of figures rather than points of controversy about Brown's license. This is a purely imaginary situation, but, as control commissioners will freely admit, it is not at all far fetched.

The task laid upon monopoly boards is too complex in its divergent functions, and too extensive in the range of its required activities. These have been conveniently lumped together under the general definition "liquor control," but

they do not admit of simple addition to form a functionally indivisible whole. It would be highly preferable, we believe, to provide a board of directors for the monopoly who would devote their attention exclusively to running the business, and to establish a separate board which would attend to the non-monopoly aspects of liquor control, such as the issuance and revocation of private licenses, the regulation of private sale of liquor, and the necessary inspection and supervision of licensed places. Although promotion of social welfare is the aim in both instances, it does not follow that all the widely differing functions should be combined in the hands of a single board. Perils of a political nature, though of a somewhat different order, beset both state-store management and private licensing. If a board proves vulnerable to political interference in one division of its work, the disease will spread to the other. It would be a measure of safety to make the separation here recommended between the two principal activities of control.

Wholesale Monopoly

The Wyoming liquor monopoly is the only one which is operated as an exclusively wholesale enterprise. A majority of the others conduct a wholesale business with on-sale licensees in combination with a retail sale of package goods in state stores. Michigan and Ohio have gone far in the direction of converting the monopoly into a wholesale business, even for package sales, by having established more pri-ately operated agencies than state stores. Every concession to private sale, whether by the package or by the drink, prepares the way for ultimate abandonment of the state-store system. Where on-sale is in private hands there seems to be no convincing reason why privately operated retail package stores should be prohibited. The anomolous situation which exists under a system of combined state and private sale can best be corrected, we believe, by the state's retiring from the retail field and maintaining only a wholesale monopoly for the sale of spirits. Many persons will

doubtless say that if a state is to make such an added concession to private sale, it should get out of the liquor business entirely. Nevertheless we think that there is something to be said for the wholesale monopoly idea where there are now state retail stores along with private on-sale.

A wholesale monopoly would have these advantages: It would simplify the task of collecting liquor revenues since all of the liquor manufactured within a state or imported into it would be channeled into the hands of a single receiving authority. It would facilitate the identification of legal liquor by proper marking and would provide for the certification of purity and quality by whatever tests desired. The liquor could be easily traced in its movement from manufacturer to retail dealer. A simple check upon illicit selling could be made by comparing volume of retail sales. Although the number of retail package dealers would doubtless to some extent increase, the private wholesaler and wholesaler-rectifier, whose business cannot be so easily watched, would still be kept from the scene.

Private Monopoly Sales Corporation

In no state has the public liquor monopoly been established as an authority independent of the ordinary state governmental organization and secure from the danger of political manipulation. This could perhaps best be accomplished by substituting a privately owned monopoly sales corporation for the present form of state liquor commission. Every advantage of the existing system could be preserved in making such a change and most of the present evils could be eliminated.

The essential features of the private sales corporation would be these:

1. It would possess a charter, franchise, or simple license, giving the sole right to sell spirits and fortified wines by the package at wholesale and retail within a state.

2. It would be operated as a limited-dividend corpora-

tion entitled to retain a fixed return of, let us say, 5 per cent on the money actually paid for capital stock.

3. A fixed markup on wholesale and retail prices would be stipulated, and net earnings in excess of the limited dividends would be paid to the state.

4. The corporation would be controlled by a board of trustees composed of five, seven, or nine members. A majority of the trustees would be appointed by the state liquor-control commission, the minority by the stockholders. No requirement as to political affiliation would be made of either group. Their compensation would be in the form of a stipulated fee for attendance at regular and called meetings of the corporation.

5. A chief executive officer, president, general manager or director, would be appointed by the board of trustees at a salary to be determined by them. The executive would have full power to select subordinate personnel, and to create an operating organization for the purchase of liquor and its sale at prices governed by the established rates of markup.

The trustees and officers of the sales corporation, having complete responsibility for the conduct of the business, would likewise have complete control over its operations. But the liquor-control commission would have the right to approve or disapprove the location of each new retail store. The commission would also have the exclusive power to make general regulations governing hours and conditions of sale, window displays, and the like. The commission would control all advertising, but, in accordance with present restrictions, the corporation would not be permitted to advertise its goods except by printing price lists for posting within its stores. It is not necessary to specify all of the distinctions between duties of the trustees and the control commissioners. The trustees would reign over the business and the commissioners would be supreme in matters of social control related to possible abuses in the consumption of liquor. Trustees would be selected on the basis of their qualifica-

tions to supervise business affairs; control commissioners would be chosen for their fitness as administrators of the licensing and regulatory functions.

No great difficulties should be encountered in making the transition from the present state-owned monopoly system to the one just outlined. The corporation would pay the state for the assets acquired and would take over the employees engaged in the occupations which would be transferred to its jurisdiction. The employees engaged in licensing, inspection, and law-enforcement work would remain with the liquor-control commission.

The private sales corporation is not advocated as a necessary change for some of the smaller monopoly states where political influences have been negligible. If the states which have made a good beginning with public monopolies cannot hold their independent status in the years ahead of them it will then be time enough to decide whether to set up a private corporation or to abandon the monopoly plan altogether. In the larger states, particularly in those where political influences have intruded, and where the task of regulating private on-sale licensees makes great demands on the control board, the suggested change would seem to merit careful consideration.

Chapter Seven

TAXATION AND REVENUE

The repeal of prohibition was brought about as much by the need for revenue as by the desire to eradicate the evils that grew out of that social experiment. The economic depression made it impossible for either the federal or local governments to derive enough funds from the already overburdened taxpayers. As incomes diminished and the need for unemployment relief mounted, it became of increasing importance to solve the financial dilemma. It was readily recognized that legalized liquor provided a partial solution, and hence the general repeal movement received an impetus. "Turn the bootlegger's profits into public revenues," became a watchword.

In preprohibition days a substantial portion of the federal government's income came from liquor sources. The power to levy an excise tax on liquor was looked upon as within the special domain of the federal government. With repeal, however, the states, in even more straitened circumstances than the national government, were determined to share in the much anticipated financial returns. Every possible form of liquor tax has been devised. The state governments have duplicated the federal excise taxes, and further, both are now exercising their power to exact an occupational tax and special license fees. In some cases the municipalities levy additional taxes, including a retail sales tax, which also help to increase the burden on the liquor industry,and indirectly, the cost to the consumer.

The Excise Tax

The Federal Spirits Tax

The exceptional opportunity afforded by spirituous liquor

as a source of taxation was early recognized. Its "inelasticity of demand" insures a dependable revenue, and its character as a potentially harmful luxury justifies its taxation on sumptuary grounds. These two considerations by themselves should render the tax policy exceedingly simple, tending toward the imposition of high duties. Another factor, however, namely, ease of tax evasion, complicates the situation. As a result of this complication the tax policy contains two conflicting aims: a desire to derive the maximum revenue and to deter consumption, on the one hand; and the desire to prevent bootlegging and illicit trading in liquor generally, on the other.

The main consideration of the liquor policy in earlier times was directed toward revenue. The first liquor tax was inaugurated as an emergency measure under Hamilton's leadership in 1791. A similar tax was imposed during the War of 1812. The first regular spirits gallonage tax, an impost of $0.20 levied in 1863, was simply an application of the newly adopted internal revenue system to a commodity of which the annual output was estimated to be about 90,000,000 gallons. The successive rate increases during the next few years indicate that revenue played the predominant role in the federal taxing policy. The $0.20 tax was in force only ten months. The $0.60 tax, which succeeded it in March, 1864, was equally short lived, being displaced in January, 1865, by a $1.50 tax. At the beginning of the following year the tax mounted to $2.00. It is clear that these advances were motivated by a desire for greater returns, as was also the reduction to $0.50 in 1868. The lowering of the rate at that time aimed to eradicate the practice of tax evasion which had cropped up because of the previous high rates and to abolish corruption among revenue officials who were conniving with liquor producers in evasion. As tax evasion was reduced, the original revenue motive reasserted itself, as is shown by subsequent increases of the rate first to $0.70, then to $0.90, and finally to $1.10.

Since repeal, in spite of the danger of encouraging the

bootlegger, the federal tax policy has also had revenue as a principal aim. The rate of the excise tax on distilled spirits is as high as the highest preprohibition rate, $2.00 per gallon. This represents an 81 per cent increase over the last preprohibition rate of $1.10. In addition, the rectifier must pay $0.30 a gallon for the privilege of blending and bottling spirituous liquors. Imported products have a still heavier burden to bear since they are subject both to the same excise rates as domestic products and in addition to the tariff duties. This is a departure from the prevailing practice of earlier times when imported liquors were not subject to double imposts. Before October 13, 1917, the import duty on a gallon of foreign-distilled spirits was $2.60; no internal revenue tax was imposed.[1] When the post-repeal internal-revenue law became effective,[2] the import duty on the same product was $5.00 plus the $2.00 internal revenue tax which is imposed on domestic spirits.[3] Since then a gradual reduction of import duties on a few spirituous beverages has taken place. Under a reciprocal-trade agreement between the United States and Cuba, effective September 3, 1934, the rate on Cuban rum was reduced to $2.50, and a similar reduction on Haitian rum was made effective on June 3, 1935, through a treaty with that country. Under the terms of a later agreement,[4] between the United States and Canada, the same tariff rate was adopted for bonded whisky imported from the latter country,[5] and a still later agreement with the Netherlands made the same rate applicable to gin.[6] The recent tariff

[1] This is the date when wartime prohibition went into effect. Since this date imports have been subject to internal revenue taxes in addition to import duties.

[2] January 11, 1934.

[3] The validity of the $2 tax was settled in Park & Tilford Import Corp. v. United States, U. S. Customs Court, third division, Oct. 25, 1935.

[4] Concluded on Nov. 15, 1935; effective Jan. 1, 1936.

[5] Whisky which has been aged in wooden containers at least four years prior to the date the whisky is entered or withdrawn from warehouses for consumption.

[6] Effective Feb. 1, 1936.

negotiations with France resulted in a like reduction on cordials, brandies, and related spirituous beverages.[7] The various trade treaties, of course, under the most-favored-nation clause, also brought about reductions on liquor imports from certain other countries.[8]

Present Rates Responsible for Continuance of Illicit Traffic

The heavy excise and customs rates on distilled spirits are commonly cited as the most important reason for the continuance of the illegal-liquor traffic since the repeal of the Eighteenth Amendment. Although, as will be shown in the following chapter, the extent of the bootleg industry is variously estimated, it is commonly held to be substantial. Figures for all liquor-law violations are lower at the present time than during prohibition, but they are appallingly large in the face of the present accessibility of legal liquor. Liquor officials, administrators, and civic leaders, with few exceptions, are agreed that the high price of legal liquor is the main cause for the continued existence of the moonshiner, smuggler, and bootlegger. Mr. Joseph H. Choate, Jr., while director of the F A C A, was perhaps the leading proponent of this point of view. He resolutely held to the theory that the high tax rates alone are responsible for the perpetuation of the illicit liquor traffic and repeatedly urged lower taxes as essential to its elimination. His remarks at the Governors' Conference at Mackinac Island sum up his point of view:

> We could well afford a present reduction in revenue in order to destroy our greatest source of lawlessness. . . . To cheapen the legal supply, taxes, tariffs, and license charges ought all to be reduced and every form of regulation which imposes expense, as many of them do, on the legal industry, ought to be diminished.[9]

[7] Announced on May 13, 1936; effective June 15, 1936. Under the terms of this treaty the tariff on champagnes and still wines was also reduced.

[8] The most recent instructions of the President concerning the application of the reduced rates on alcoholic liquors is contained in a Treasury Decision, 48131 of Feb. 3, 1936.

[9] July 26, 1934.

Mrs. John S. Sheppard, member of the New York State Liquor Authority, expressed a similar point of view in December, 1934, when she said:

> If it could be tried out it might well be to the greatest ultimate advantage of the state, not only from the moral but from the economic side as well, to lower all taxes on alcoholic beverages and to lower the license fees to a very small minimum so that the illegal dealers could not compete with the legal liquor dealers. When these well-organized gangs of bootleggers were eliminated, it would then be possible to work out an ultimate and constructive plan of taxation and license fees.

Many other liquor-control administrators have emphasized tax reduction as the first essential of control. Unreasonably high taxation has also been the subject of innumerable newspaper and magazine articles, editorials, and special features, and has, of course, provoked complaints among members of the liquor industry itself:

> We have had over a year of repeal now and we have only to look about us to be convinced that bootlegging is still here and, we fear, here to stay until the government adopts the common sense policy of recommending to Congress a reduction in the tax on distilled spirits.[10]

The nation-wide survey of liquor control undertaken to gather material for this volume also brought out the opinion from all walks of life that the high price of legal liquor is the main reason for continued patronage of the bootlegger. A questionnaire on the subject of the bootlegger elicited responses which further corroborate this point of view.[11] Those who admitted patronizing the bootlegger since repeal presented as the sole reason the price differential between the legal and the bootleg product.

[10] Letter to Secretary Morgenthau from Ammon McClellan, Executive Director of the League of Distilled Spirits, Rectifiers, and Rectifiers Code Authority, published in the New York *Times*, Apr. 14, 1935.

[11] This questionnaire was sent in the winter of 1935 by members of our staff to residents of selected towns in New York, New Jersey, Pennsylvania, and Connecticut.

Pyramiding Taxes

Although the federal excise tax is the most important factor in the situation, the other federal and local taxes mentioned at the beginning of this chapter also influence considerably the cost of liquor to the consumer. When the many levies, including state and federal excise taxes, stamp taxes, license fees, and sales taxes, are added together, the total is unquestionably excessive. The federal internal revenue tax on a gallon of whisky is $2.00, the average state tax is approximately $0.80,[12] and the cost in license fees and stamp taxes—including distillers', rectifiers', wholesalers', retailers', and consumers'—also amounts to about $0.80, making a total of $3.60 on a gallon of whisky. The selling price of medium-grade blended whisky is approximately $2.00 a quart. With a tax of $0.90 one can easily see how much a part of the total price the tax itself constitutes. If a cheaper grade of whisky is purchased the high percentage of tax is even more emphasized. For example, the customer who buys whisky at $1.50 a quart is getting $0.60 worth of whisky and $0.90 of taxes. Thus the consumer who buys cheap whisky because he cannot afford the more expensive grades must pay a greater proportionate tax than the purchaser of higher-priced liquors.

Lack of Correlation between Tax and Value of Product

Although the multiplicity of imposts is partially responsible for the size of the total tax, the federal excise is the outstanding single factor. The federal excise is also chiefly responsible for the lack of correlation between the size of the tax and the value of the product. Although there is great variation in the retail value of spirits, the excise on all of them is at a uniform flat rate. It is generally held that a tax at a uniform rate measured by specific units is justifiable only if there is no variation, or perhaps a small variation, in the value of the units. The uniformity of the beer tax, for example, is defensible, since there is a mini-

[12] See p. 181.

mum of variation in the value of the product. A like flat excise could not be advocated, however, in place of the present proportional rates on wine. Although there are two considerations in establishing wine rates, *i.e.,* alcoholic content and retail value, the price factor is given far more weight. It is for this reason that expensive champagne and other sparkling wines carry a far higher rate than still wines of equal alcoholic content. Inasmuch as there is a similar variation in the retail value of spirits, it would appear that a proportional tax based on value might be substituted for the present tax measured by gallons alone. A proposal to eliminate the disparity between the amount of the tax and the value of the product by making such a change was offered by Senator Copeland on August 13, 1935. The Congressional consideration given the proposal does not indicate that the substitution of a proportional for the uniform tax is imminent. And indeed, while having advantages, the ad valorem tax also has its drawbacks, as it offers increased opportunities for fraudulent practices, false claims, and complications in appraisal. In spite of such limitations, however, the idea deserves consideration.

Tax Rates Based on Alcoholic Content

Different tax rates are imposed on beer, wine, and spirits because they have different alcoholic content. A similar differentiation in rates on the basis of alcoholic content applies to the various beverages within the category of wine, but the federal tax on spirits is a uniform rate by the gallon.[13] Thus, since the tax on a gallon of highly concentrated spirits is the same as that on a gallon of diluted spirits, a natural price advantage is created for the former beverage. Such a result is unfortunate, since it serves to heighten the already existing American preference for strong intoxicants. It would be a far better arrangement to impose tax rates

[13] When the alcoholic content is above proof, the tax is collected on each proof gallon. *Cf.* Revenue Act of 1918 as amended by the Liquor Taxing Act of 1934, Sec. 600 (4).

which definitely favor the spirituous beverages of low alcoholic content. The most ardent exponent of this policy, Professor Yandell Henderson of Yale University, bases his reasons on toxicological grounds. It is his belief that the concentration above which alcohol becomes seriously habit forming and harmful is between 15 and 20 per cent of alcohol by volume, and that higher percentages are increasingly injurious not only to the individual, but also socially and politically. In his opinion, the obvious way to reduce the consumption of strong spirits is to promote the consumption of beverages of low alcoholic content by giving advantages based on price differential. It is true that the consumption of wine and beer serves to displace the consumption of spirits, but these relatively milder beverages, according to Professor Henderson, do not constitute adequate substitutes for strong spirits. The national predilection for distilled spirits requires that the substitute for strong spirits consist of another form of the same type of beverage. The most suitable substitute, according to Professor Henderson, is spirituous liquor diluted to the alcoholic strength of naturally fermented wine. Wise public policy, therefore, would dictate the imposition of low taxes on all diluted spirituous beverages and high taxes on concentrated beverages. Since the substitution of diluted for strong spirits affords the only solution of our drink problem, it is "the duty both of science and of statesmanship to arrange taxation so as to permit American ingenuity and business enterprise to find and introduce milder beverages as substitutes to replace proof spirits and promote dilution."[14] Up to the present time, Professor Henderson's plea has, for the most part, gone unheeded. The federal tax continues as a uniform flat rate, and only a few states, it will be seen later, have attempted to base the rate of the spirits tax on alcoholic strength.

[14] From *A New Deal In Liquor*, by Yandell Henderson, copyright 1934 by Doubleday, Doran and Company, Inc., p. 27.

Methods of Collection

Federal excise taxes on alcoholic beverages are now collected at the point of production or importation. In order to eliminate the prevalent tax evasion which this system makes possible, other methods of collection are being suggested. The most important, proposed by Senator Copeland, is to make the tax on spirits payable at the point of retail sale rather than at the distillery. This arrangement, however, appears to us an instance of the cure being worse than the disease, since under it the government would face the task of supervising thousands of retail establishments instead of only a few manufacturers. More thoroughgoing enforcement of the liquor-tax law, rather than a change in method of collection, appears to be indicated.

State Excise Taxes on Spirits

The state taxes on distilled spirits are not only high but they also present vivid contrasts. Rates range from the minimum of $0.40 per gallon in Arkansas, Massachusetts,[15] and Nevada to a maximum of $1.60 per gallon in Colorado.[16] The rate during the first year of repeal was even higher in some instances, as in Indiana where a $2.00 tax was imposed. The average rate is $0.78, the most common being $0.50, $0.80, and $1.00. Some states levy a tax on profits from liquor sales in place of the excise tax, and certain others a tax on the turnover. Thus in Connecticut there is a gross-receipts tax of 4 per cent on retail sales and 1 per cent on wholesale sales, and in Ohio, until the spring of 1935, there was a tax of 25 per cent on gross profits.[17]

[15] The Massachusetts rate is imposed on spirits of an alcoholic content between 24 per cent and 50 per cent by volume. The rate on spirits of an alcoholic content not over 24 per cent is $0.15, and on spirits of an alcoholic content over 50 per cent, it is $0.40 per proof gallon.

[16] In many states special rates are imposed on beverages sold in containers of less than a gallon capacity. For example, in Kentucky the tax on spirits in containers of a half-pint capacity or less is $0.07, except that the tax on spirits in two-ounce containers is $0.02 per two ounces.

[17] The present rate in Ohio is $1.00 per gallon paid by the state monopoly as a mandatory profit.

In addition to the excise tax a few states have so-called floor taxes on certain types of bonded liquor, as for example the \$0.50 per gallon floor tax Kentucky imposes on all liquor manufactured prior to December 5, 1928, and the \$0.02 on liquor manufactured prior to December 5, 1933.[18] Finally, there are one or two instances where a special manufacturer's tax is added to the excise tax. Maryland belongs in this group, levying \$0.05 per gallon on all spirituous beverages manufactured in the state in addition to the \$1.10 excise tax.[19]

The rates in some states vary according to alcoholic content. In Delaware liquor under 25 per cent of alcohol is taxed \$0.75 per gallon while the charge on all stronger liquor is \$1.00 per gallon. In Massachusetts, New Mexico, New York, and Wisconsin even greater favor is shown for the spirituous liquors of low alcoholic content. Whereas the rates for proof spirits in these states are \$0.40, \$0.80, \$1.00, and \$1.00, respectively, the rates for beverages of an alcoholic content of 24 per cent and under are \$0.15, \$0.24, \$0.50, and \$0.25. Indiana's liberal attitude toward mild spirits is the most conspicuous, the law stating that all spirituous beverages which have been diluted with carbonated water to an alcoholic content of 15 per cent are considered in the nature of wine and taxed as though they were wines of an alcoholic content of 21 per cent or under. Thus while spirits containing more than 15 per cent of alcohol bear a \$1.00 tax, the tax on the diluted beverages is \$0.25. Further experiments along these lines might easily result in an increase in the consumption of the milder beverages.

Although universally adopted, the state liquor taxes must

[18] Pennsylvania is another state where a floor tax is imposed on pre-repeal liquor.

[19] During the first two years after repeal Kentucky imposed a \$0.05 manufacturers' tax. The present major tax is an excise of \$1.04 per gallon. In addition to the excise tax a \$0.05 tax is imposed on the products of blenders and rectifiers. In Arkansas the gallonage tax is \$0.40 per gallon; in addition there is an excise or license tax of \$0.05 per gallon.

be regarded as unnecessary duplications of the federal levy. They serve to increase the selling price of the product, and the separate elaborate collection devices constitute an unnecessary expense. If the federal government were to act as the collector of all excise taxes, the states would be spared this expense. The elaborate structure devised in many states for collecting the excise tax is cumbersome. For example, some states require that when packages reach the wholesaler they be opened and their containers be unwrapped for the purpose of affixing an excise stamp on every container. Such a procedure is a waste of effort, is an unnecessary expense, and, moreover, is no absolute safeguard against such violations as the refilling of stamp-bearing containers with untaxed liquors. The expense entailed in this procedure could well be avoided by the simpler method, used in several states, of monthly production reports from the producer and similar importation reports from the importer. The state tax collector could easily verify the truth of these reports by comparing them with federal report forms or shipping documents. Although this simpler collection method is preferred to the more elaborate and expensive ones described, its advantages still fall far short of those to be reaped by integrating the collection of all liquor taxes under federal control. A few of the states are inclined to anticipate an arrangement of this sort. Thus the Oregon liquor law provides for the annulment of the provisions on taxes in the event that the federal government devises a scheme for collecting the liquor taxes jointly for itself and for state and country. Similarly, a provision of the Texas liquor law states that in such an event the liquor board is to have power to enter into contracts with the federal authorities and to abrogate any state provisions in conflict with federal law.

Federal Beer and Wine Taxes

With the return of legal liquor, it was expected that beer and wine would be favored in taxation so that their

are, respectively, $2.48, $2.50, $2.75, $3.00, $3.00, and $4.65 per barrel.[27] Some states show preference for lighter beers by making a distinction in the rate on the basis of alcoholic content. For example, there is a lower rate for beer with an alcoholic content of less than 3.2 per cent by weight in Minnesota, South Dakota, Ohio, and Utah; less than 4 per cent in Washington;[28] 5 per cent in Arkansas and North Carolina; and 6 per cent in New Mexico.[29] That the consumption of a beverage bears a direct relation to the state excise on it is illustrated by the following figures on the consumption of wine.[30] In a group of states where the taxes range from $0.02 to $0.10, the annual per capita consumption runs from 2.28 gallons to .19 gallons, whereas in the group where the taxes range from $0.10 to $0.50, the per capita consumption ranges from .11 gallon to .01 gallon. The correlation between size of tax and volume of consumption does not imply that the one is the necessary cause of the other. It is as reasonable to infer that the popularity of wine drinking in a given place is the cause of the low tax as to contend that greater quantities of the beverage are consumed because the rate is low. Certainly it is more reasonable to attribute the low tax in California to "wine-consciousness" than to attribute the popularity of wine to the low tax.

Trends in Liquor Taxation

The recent developments in the federal taxing policy indicate a trend to lower imposts. The reductions in excise and import rates imply an appreciation on the part of the federal officials that post-repeal bootleg activities were made possible chiefly by the differential between taxed and un-

[27] The Ohio tax on strong beer is $2.50 per barrel as contrasted with a $1.50 tax on light beer. Similarly, the tax on heavy beer in Texas is $4.65 per barrel, while the tax on light beer is only $1.24 per barrel.

[28] By weight. This holds for all cases except where otherwise indicated.

[29] By volume.

[30] Compiled from a report by Gerald G. Pearce, entitled "Grape and Wine Production and Consumption Data, 1900-1934."

taxed goods. No similar change of policy is discernible among the states.[31] Although the direct bearing high taxes have on illicit liquor activities is fully realized among states, the tendency is in the direction of still greater imposts. Funds for relief and other social-welfare purposes are so much needed that all considerations about the effect of high taxes on tax evasion are waived in favor of readily calculable prospects for returns from high levies. Thus, as early as the summer of 1935 the state of Washington imposed a 10 per cent sales tax on spirituous beverages dispensed through the state liquor stores. Kentucky, by a recent amendment to the liquor law, substituted a $1.04 consumption tax for the original $0.05 production tax. This change does not necessarily represent an increase, inasmuch as the higher tax is applicable only to liquor actually sold in the state for consumption, while the smaller tax was levied on all liquor manufactured, whether sold there or not, and even on that portion of the original output which was lost through evaporation. But the recent impost of $0.05 per proof gallon on Maryland products is clearly an increase because it is additional to the regular excise tax. Likewise, Maryland's new beer tax of $0.02 7/16 per gallon is an increase, because until this tax was imposed, beer was manufactured tax free in the state. It is also noteworthy that during recent months Governor Herbert H. Lehman of New York advocated increases in liquor taxes for the purpose of raising needed relief funds. Another striking example of state attitude toward liquor as a source of ready revenue is furnished by Pennsylvania, where the only tax measure of those sponsored by Governor George H. Earle to be passed by both houses during the first six weeks of the 1936 special legislative session was a 10 per cent tax on the retail prices of liquor.

A recent incident in Vermont has alone demonstrated the

[31] There are a few instances of tax reduction among the states. In Rhode Island, for example, the service charge on imported wine has been reduced from $0.20 to $0.05. Another instance is the reduction in the rate of the Indiana spirits tax from $2.00 to $1.00.

revenue motive in relation to liquor more clearly. In that state a unique legislative maneuver took place when the old-age pension fund was facing a money shortage. In order to raise the required sum of $150,000, a bill was introduced during the last few days of the 1935 legislature levying a special sales tax of $0.05 on each pint of liquor sold in the state stores, the calculation being based on an annual sale of 400,000 gallons. Before the bill's passage it was discovered that a mistake had been made in reckoning the volume of sales. Instead of the assumed 400,000 gallons, the records showed a 171,000-gallon consumption for the preceding year. Thereupon the tax was promptly boosted 100 per cent to $0.10 a pint, and the bill was passed half an hour before adjournment of the session. Manifestly, the rate of tax was based on the needs of the old-age pension fund; the effect on liquor-control policies was not given a thought.

While an increase in liquor taxes appears to be the most suitable means for raising state funds, it cannot be emphasized too strongly that every increase in liquor imposts increases the motive for evading the tax. Higher liquor taxes mean greater law-enforcement problems, since every increase in the rate of the liquor tax is accompanied by a corresponding increase in marginal bootleggers.

A consideration of social implications indicates the use of great care in raising liquor taxes. Such consideration indicates the use of even greater care in raising taxes on the lighter alcoholic beverages. There is a general belief that the cause of temperance would be furthered by a substitution of lighter beverages for the heavier liquors. A lower tax on light beverages, and indirectly lower prices, might quite conceivably bring about such a substitution. The new federal excise and impost rates on wine represent sound tax policies. Abolition of state taxes on wine, which do not really yield a rich enough revenue to compensate for the deterrent effect they have on consumption, would constitute further progress toward temperance. Increase in the con-

sumption of beer with a corresponding decrease in the consumption of spirits is perhaps the most important goal in this direction, because beer is the least intoxicating of the alcoholic beverages. The substitution of a three-dollar federal tax for the present five-dollar tax might constitute one factor for the achievement of this end.

License Fees

Federal

Just as the state excise taxes may be considered a duplication of the federal gallonage levies, so the federal stamp taxes, or license fees, which in fact they are, may be viewed as a duplication of the state license fees. These taxes came into use during the Civil War period when they formed part of a general system of stamp taxes on gainful occupations. The method is to assess a specific lump sum, instead of basing the tax on net earnings, rental paid, or gross sales. This procedure has the evident advantage of simplicity and ease of assessment; but in this simplicity there inheres much that is arbitrary and unjust. Instead of being a duty proportional to the amount of sales, and thus subject to diffusion among the consumers, it is in effect a fixed and arbitrary requisition, imposed as a condition precedent to the privilege of doing business. By such a plan the large producer or merchant pays the same duty as his neighbor who sells one-half or one-third the amount of goods, and is thus able to distribute the amount over a larger surface, or to assume the tax altogether, and crush out the less fortunate competitor. Such, at least, is the tendency of a tax assessed by this method. That its injustice is not a source of complaint at the present time is not due to the principle involved, but rather to the fact that the rates are comparatively low, and an inconsiderable burden to even the smallest dealer. For example, the tax on wholesalers of liquor is $100, and that on wholesalers of malt liquors $50. Retailers of liquor and of malt beverages must pay $25 and $20 respectively. In contradistinction to its practice in

regard to this license tax imposed upon sellers, the government does graduate the tax upon brewers and rectifiers on the basis of output.[32]

It should be noted, in considering the desirability of having a federal license fee at all, that in many states federal licenses are granted in excessive numbers and without regard to the character of the applicants. For example, in Idaho, where in the summer of 1935 there were only 97 state liquor stores and state liquor agencies, as many as 410 federal retail liquor licenses had been issued. Obviously the extra 313 licenses were obtained by speak-easy proprietors. A liquor official of the state expressed his grievance against this federal policy when he said, "It seems strange that the government should sell stamps to private individuals in states with the state store system. To me it is connivance with lawlessness." It cannot be too strongly stressed that the federal government should limit the issuance of wholesale and retail licenses absolutely to those persons who have obtained licenses from the state.

Variations in Size of State License Fees

The state license fee, and perhaps also that of the municipality, may be considered proper ones. They are usually regarded as privilege taxes, which may explain why the amount is determined in most cases without regard to the volume of business transacted. Although the fee does not vary according to the size of the business, it does differ considerably from one class of liquor business to another, and in the same class from state to state. It may be said that generally speaking the manufacturers' fees are the highest, the wholesale dealers' are the next in size, and the retailers' are the smallest. As to variation among states, a few illustrations may serve to bring out this point. Striking contrasts are furnished by the distillery fees. In Oregon, the

[32] Brewers are taxed $50 per year for an output of less than 500 barrels per year and $100 for an output over 500 barrels per year. Rectifiers are taxed $200 for an output of 500 barrels or over, and $100 if the output is under 100 barrels.

annual fee is $100; in New York, $7,500; while in Pennsylvania, for distilleries with top output, the figure is $25,000. These figures represent extreme cases, for in the majority of states the fees range from $1,000 to $5,000.[33] Brewers' fees also differ widely in cost. South Carolina charges the lowest fee, a flat rate of $100, while New Jersey and Massachusetts are conspicuous with their charges of $4,000 and $5,000 for maximum output.[34] Perhaps this is accounted for by the fact that the brewing industry is unimportant in South Carolina while it is of considerable importance in the two other states. Strong but less striking contrasts are found between the brewers' taxes of most of the other states, where the fees range from $250 to $3,000. Wholesalers' fees are usually high, although in many instances they are lower than those required from distillers and brewers. The same variations from state to state found in the other classes of licenses exist here. The privileges permitted under this license also vary greatly. Often the license covers the privilege of importing. In a few instances a manufacturer is obliged to secure an additional wholesaler's license to distribute his product. Blenders', bottlers', rectifiers', and importers' fees follow the same general pattern as that of the producers and wholesalers.

Retail license fees are ordinarily much lower than those of producers and wholesalers; and yet these fees, together with the license requirements, differ even more widely than

[33] In a few instances the fee is graduated according to production, as the above reference to Pennsylvania indicates. A graduated scale exists there, starting at $2,500 for the manufacture of 500,000 gallons of spirits a year, and rising to $25,000 for the manufacture of more than 15,000,000 gallons a year. The minimum fee of $50 in Delaware permits the manufacture of 500 gallons of spirituous liquor. For an output over this amount an additional charge is made. In Ohio a fee of $1,000 is charged for a production of more than 500 barrels and a charge of $2 a barrel for a production of less than 500 barrels. A few other states have similar graduated license fees.

[34] The Colorado fee for the manufacture of 3.2 per cent beer is $100, while the fee for the manufacture of stronger beer is $250. In Maine and Nebraska, where brewers' fees are graduated according to output, the minimum fee is $100.

the fees and requirements for producers and wholesalers. In several places, package stores and on-premises establishments must secure a license for the sale of spirits, and a separate one for the sale of beer and wine.[35] In New York, licenses may be obtained for the sale of spirits and wine combined, for beer and wine combined, or for beer only. In other instances, *e.g.*, Maryland, Massachusetts, and the District of Columbia, licensees have their choice between a plenary license which allows the sale of all alcoholic beverages, and a limited license for the sale of beer and wine. Fees vary also according to the size of the governmental unit in which the licensed establishment is located.[36] Another basis for differentiation is the size of the retail business. In Iowa, Michigan, and the District of Columbia, the hotel fee is based on the number of bedrooms, and in Indiana on the number of patrons the hotel dining room can accommodate. In a few states the amount of the retail fee is determined by the state authority. Thus in New Hampshire, although the maximum and minimum limits are set in the law, the amount of the fee within these limits is fixed by the liquor commission. In some instances—Colorado, Illinois, Louisiana, Missouri, New Mexico, and Virginia—where the state retail license fee is a nominal one, retail licensing, which includes fixing license fees, is entrusted to local licensing authorities. In a few states, namely, Massachusetts, Minnesota, New Jersey, Wisconsin, and Wyoming, there is no provision for the issuance of a state retail license. In these states the matter of retail licensing is entirely a local one, except for the statutory provision as to the limits of the license fee.[37]

The foregoing variations permit only a few rough contrasts to be indicated in this field. The state license, for example, which permits the on-premises dispensation of

[35] Arizona, California, Indiana. This applies also to hotels and restaurants in Ohio and Vermont.

[36] Examples of this are: Delaware, Indiana, Kentucky, Minnesota, New York, Pennsylvania, Rhode Island, and South Dakota.

[37] The Minnesota law provides only for the maximum charge.

alcoholic liquor, ranges in price from $5 in Louisiana and $10 in New Mexico to $2,500 in Massachusetts, and the price for the package sale of liquor differs in almost equal degree, namely, from $5 in Louisiana and $10 in New Mexico to $1,500 in Massachusetts and Wyoming. But inasmuch as the Louisiana and New Mexico fees are supplemented by local fees, and inasmuch as the figures given for Massachusetts and Wyoming represent the upper limit permitted by law, the comparisons are not valid. While the local retail license fee of $2,000 in New Jersey might be classed with the Massachusetts figure, it should be borne in mind that, unlike the majority of retail fees, it covers both types of retail privilege, *i.e.*, package sale and on-premises sale.[38] Although such complicating factors as dual sales privileges and combined state and local license fees render cost evaluations of retail license fees comparatively unreliable, it may be said that the charge for a license permitting either type of retail enterprise is most often between $100 and $500. The separate retail beer license, as would be expected, is considerably less expensive, and the fees for other special licenses, as for example, the club license; the vessel and dining-car license; the license for the sale of medicinal liquor, sacramental wine, and industrial alcohol; and the licenses required in some places for the privilege of transporting alcoholic beverages, are likewise comparatively small. The last-mentioned class of license is not common, and even less so are special licenses for liquor vendors at picnics or banquets, liquor establishments for the special privilege of selling all night, caterers, physicians, educational and medical institutions, and consumers.

In most states no definite aim is revealed in the imposition of the license fee, although this instrument might well constitute a control measure. For example, a very high license fee may eliminate undesirable applicants. As

[38] The $2,000 fee is the maximum charge for a license of this type permitted by law. The localities set the fees between the permitted limits of $200 to $2,000.

this sort of control measure, the fee should be imposed with care, for important dangers inhere in the use of high license fees. The most important of these are the encouragement of speak-easies and other unlicensed establishments and the stimulation of sales by the licensees to realize the cost of the license. Often, too, when establishments have found the high tax a heavy burden they have resorted to such illegitimate practices as the sale of untaxed goods, the sale of liquors to minors and intoxicated persons, and the introduction of such trade-drawing features as gambling and prostitution.

The low license fee, on the other hand, creates its own dangers. One, unless limited by statute, is the overabundance of liquor establishments. Another is the relatively little value attached to the license, and this in turn results in an indifference toward possible revocation. This argument against low fees is not as serious as some, because it is not the loss of capital invested but rather the loss of the business itself which acts as the deterrent. A more important danger is the small establishment which the low license fee makes possible. The larger establishment, even when located in poor sections, and dealing in cheaper products, maintains a more wholesome atmosphere than the small inexpensive "bar" and "dive." The acknowledged superior character of the larger places may be due to wider patronage, to a more mixed assemblage of patrons, or to the open nature of the premises. These establishments constitute an effective control in themselves.

Interstate Relations Affecting the License Fee

The desire to protect state industry in liquor is evidenced by the common requirement that solicitors for out-of-state dealers obtain licenses. Indiana, Massachusetts, Missouri, New York, Ohio, Oregon, South Dakota, Texas, and Wisconsin are among the states requiring this of outside traders.[39] In Pennsylvania the protective measure takes on a

[39] The District of Columbia also requires a solicitor's license.

slightly different form. Here the requirement is that a seller of distilled liquor manufactured outside Pennsylvania must pay the Pennsylvania liquor board the same fee that is required of a Pennsylvania manufacturer for the privilege of selling his goods in the state where the seller's liquor is manufactured. For example, since the sales permit fee in Massachusetts is $300, a seller of Massachusetts-manufactured liquor will have to pay $300 for the privilege of selling to the Pennsylvania liquor-control board, whereas the seller of liquor manufactured in Connecticut, where the fee is $1,500, will have to pay $1,500. The experiment has not gone on long enough to afford opportunity for evaluation, but it may be questioned if the universal adoption of such a burdensome arrangement might not be of less worth as a protection of the state's liquor industry than a source of trouble and confusion to liquor administrators and dealers alike.

Revenue

Disappointing Federal and State Liquor Returns

Congress had expected an annual revenue from liquor ranging between $500,000,000 and $1,000,000,000. This estimate was arrived at by computations based on the present tax rate and the 1914 per capita consumption of spirituous beverages. The actual revenue for the first two years, however, amounted to approximately $400,000,000 per year. The reason given for this disappointing yield is the prevalence of the illicit-liquor traffic. The per capita consumption of taxpaid spirits at the present time is only 29 per cent of what it was in 1914 and it is held by many persons that the difference is accounted for by bootlegging rather than by a decrease in consumption. Indeed, it is a fact that the government may actually obtain a smaller revenue under a higher tax rate than under a lower, and vice versa, as is demonstrated by our experience with different rates of liquor taxes before prohibition. Particularly convincing illustrations of this fact are found in the record of the years

1866 and 1868 when the tax rate was successively increased and decreased. It was expected that large revenues would accrue from the increase in rate of 1866. As a matter of fact this expectation was not fulfilled.

> Contrary to all expectations and all known rules of calculation [states a tax historian in a discussion of the incident under consideration] the advance of the rate of $1.50 and $2.00 per gallon produced no corresponding increase in the revenues. During the ten months of the fiscal year 1863, the tax was uniformly twenty cents per gallon, and the revenues therefrom $3,229,990, collected from 16,149,954 gallons of spirits.[40]

The writer states that the commissioner confidently expected to realize $40,000,000 from spirits during the last seven months of the fiscal year 1865 but that his estimates were far wide of the facts and the actual receipts for the entire year were but $15,995,701, or $24,000,000 less than had been expected for half that time. For 1866 the commissioner anticipated $80,000,000 and again his expectations were found to be illusory, for during this year only about $29,000,000 was turned into the Treasury for this source, while for the fiscal year 1867 the liquor revenues fell considerably below this amount. Contrast with this the experience in 1868 when, instead of decreasing the revenue, a reduction in the rate from $2.00 to $0.50 materially increased the tax returns.

> The results of this change were remarkable [the author states]. Illicit distillation on a large scale practically ceased with the imposition of the new rate [and the receipts from liquor] rose like magic from thirteen and a half millions in 1868, to over forty-five millions in 1869, while the number of gallons reported for taxation increased in an equal degree.[41]

These experiences demonstrate that not only from a social but also from a fiscal point of view a reasonable tax rate is more advantageous. As has been shown, when a govern-

[40] Frederic C. Howe, *Taxation and Taxes*, p. 142.
[41] *Ibid.*, pp. 144, 145.

ment goes beyond the maximum point in the imposition of the tax "it very easily 'overreaches' or cheats itself."[42]

Although the disappointing returns at the present time indicate a like defeat through a similar defective calculation, noticeable improvement in the situation has been observable in the latter part of the two-year period. This has undoubtedly been brought about by increased vigilance on the part of enforcement agencies. Whether this is the reason or not, the yield from liquor taxes is increasing. Whereas in the year ended June 30, 1934, the federal government collected only $258,911,332.62 on account of liquor taxes of all kinds, in the following year collections amounted to $411,021,772.35, while in 1936 they amounted to $503,290,656.38. The fact that in the year 1933-1934 repeal did not become effective till December, 1933, was to a great extent responsible for the marked increase, but not entirely, because prior to December, 1933, considerable revenue had been derived from the taxation of beer and wine of low alcoholic content. Other comparisons, however, furnish better illustrations of the point we wish to make. For example, in the calendar year 1935, liquor taxes yielded about $458,494,721 compared with $374,571,438 in 1934. Undoubtedly the implication is that the trend is upward and that receipts for the current year will exceed even those for the preceding year. In the aggregate, receipts from liquor taxes for the fiscal year, 1936, exceeded those for any year in the preprohibition period except 1918 and 1919, when very high rates were imposed. It is safe to conclude that liquor taxes are again an important element in the federal tax system.

Like the federal government, the states have obtained much less revenue from liquor taxes during the first two years than they had anticipated. The revenue has amounted to approximately $110,000,000 a year exclusive of the net profits of the state liquor monopolies. However, the yield

[42] D. A. Wells, quoted in Frederic C. Howe's *Taxation and Taxes*, p. 146.

from the state taxes is also increasing, apparently due to the same cause which is behind the increase in the federal returns, namely, more effective collection. The state collections of liquor excises will probably never be as complete as the federal, however, because interstate shipments facilitate avoidance.

Earmarking of Revenues

The desire for revenue from liquor sources has been shown. It is further demonstrated by the emphasis placed on the special uses to which the revenue is put. On the eve of repeal this new revenue was regarded as the reservoir for unemployment relief. Nebraska, New Mexico, Montana, Oregon, and Pennsylvania, and Washington have set aside a portion of liquor income for unemployment relief, while in other states this additional revenue has been allotted to such undertakings as highways, hospitals, Confederate pensions, tuberculosis farms, charitable institutions, mothers' aid, and drought relief. Education funds were built up by the state's share of liquor revenue in Arkansas, Florida, Indiana, Missouri, Nebraska, Nevada, New Mexico, Texas, and Wisconsin, and old-age pension funds participate in liquor revenues in Arkansas, Colorado, Massachusetts, Nebraska, Ohio, Texas, and Wyoming. And it was revealed in the earlier part of this chapter that the liquor taxes in the states cited were in almost every case increased to raise needed funds for various welfare purposes.

Earmarking liquor funds for such special purposes as these is not a sound policy. In some cases the desire either to meet a prior financial commitment or to make a substantial contribution to special funds, serves to heighten enthusiasm for liquor sales, and hence in the alleviation of one unfortunate situation another is created. The plan to aid in the reduction of state debts, as adopted in New Hampshire, and that to relieve property taxes, as undertaken in Iowa, Louisiana, and North Dakota, are both

more feasible arrangements, if any special disposition of liquor revenues is to be made. In our opinion, the best arrangement by far is to gather all liquor revenues in one state fund which would be part of the general funds of the state, either wholly unencumbered or with the encumbrance limited to the making of an allotment to municipalities and other smaller governmental units for the enforcement of the liquor law, if such an allotment were deemed advisable.

Sharing Revenues with Municipalities

The practice of sharing liquor revenues with cities and counties is common to many states.[43] Wisconsin is most extreme, returning to the cities and counties all income from license fees after administrative expenses have been deducted. In other states which share liquor revenues, the percentage of return, usually from license fees and sometimes from gallonage taxes, is most often between 35 and 60 per cent. Even in states where appropriations are made for special uses, the remaining revenues are divided either between the general state fund and the smaller governmental units or entirely among the latter. Thus, in South Dakota the revenue from gallonage taxes is assigned to the state relief fund while the proceeds from license fees are divided between the municipalities and the state fund. Arkansas is an interesting exception in that it does not provide funds for county or municipal liquor-law enforcement, but at the same time contributes to the county tuberculosis farms, health boards, and poor relief. The bulk of the liquor revenue is reserved for the state. Delaware, Minnesota, and Missouri differ from most states by retaining all liquor revenues, and they have found this a satisfactory method of administration.

Although no definite policy has been established, there are indications among the states sharing liquor revenues

[43] In some states, as for example, Massachusetts, New Hampshire, New Jersey, New York, Oregon, and Virginia, dry areas do not share in the division of liquor revenues.

with local governments that the grants from the liquor fund to the subdivisions are conditional upon satisfactory enforcement of the liquor law. The most explicit hint that there is a tendency in this direction is found in a recent amendment to the Michigan law which directs the state to return to the municipalities a part of the revenue from license fees, but only upon recommendation of the liquor commission.[44] The possession of such discretion might be converted, quite conceivably and to advantage, into a disciplinary weapon.

[44] Section 47, as amended by Laws of 1935, Public Acts No. 241, approved June 8, 1935.

Chapter Eight

LAW ENFORCEMENT

A LAW enforcement problem arises whenever alcoholic beverages are produced. This has been found to be equally true under regimes of prohibition, strict control, and liberal regulation. And the problem will persist so long as liquor is specially taxed and legal limitations are placed upon its sale. Some notion of the magnitude of the liquor-law enforcement problem may be gained by merely glancing at the voluminous federal and state statutes and administrative regulations which govern supervision of the liquor traffic and collection of alcohol taxes. Gathered together they would make fifty-four volumes of the size and type of this book.

THE ILLICIT LIQUOR TRAFFIC

The most discouraging thing about governmental regulation of the liquor traffic since repeal is that the governments have succeeded in regulating only a portion of it. The bootlegger has managed to retain a surprisingly large part of his pre-repeal business. The major problem of control, in the opinion of D. Frederick Burnett, Commissioner of Alcoholic Beverages in New Jersey, is not that of policing the legal liquor business; it is to "stop everybody else from doing the same thing that only legitimate licensees may do." We are attempting a social control of liquor, and yet it is plainly evident that we cannot really have it until we manage to get command over *all* liquor. However, in nearly every state the legal industry has received far more attention—some persons say harassment—from liquor control authorities than the illicit business.

The plain truth is that from the beginning we have not fully faced the job of eliminating the bootlegger; rather we have indulged in mingled hopes that most of the bootleggers would quit business of their own accord, that the federal government would drive out the rest, that legal producers would make the task easy by offering better liquor at reasonably satisfactory prices, and that individual consumers would sense a patriotic duty to buy only taxpaid goods. These hopes have not been realized and the bootlegger continues to plague every unit of law enforcement and to share in every phase of the commerce in liquor. Evasion of taxes is only one aspect of the difficulty he creates. He produces a vast quantity of liquor and, except for that seized by officials, sells it without the law in competition with legal dealers who are subject to strict regulation; or he sells it to the licensed dealers who can be tempted to cheat the law.

Volume of Illicit Liquor Production

It is impossible to determine, with even approximate accuracy, the quantity of illicit liquor produced in the country or the amount smuggled in. The estimates made by persons interested in the liquor business or its regulation place the volume of untaxed liquor at from 15 to 60 per cent of the total quantity consumed. Of course, no one knows a thing about the actual mathematical percentages and the more cautious observers are content to say that the illicit traffic is "of vast proportions," or that it is "rampant."

Mr. Joseph H. Choate, Jr., commenting on the bootlegging situation when he was in charge of the Federal Alcohol Control Administration, has this to say:

> The persistence, year after year, of the immense numbers of seizures shows that illicit distilleries are replaced as fast as they are seized. This could never happen unless they were needed to meet the demands of the bootleggers' business. If any great proportion of them were used much below their practical capacity, the replacements would grow fewer and fewer, and the seizures would decrease. It seems probable, therefore, that the bootleggers are now turning out

from their stills alone, not counting smuggling and alcohol-divertings, a quantity of spirits which cannot be much less, and may be more than we drank before prohibition. All this means . . . that the Government is losing more taxes than it gets, and that a colossal criminal industry, necessarily highly organized, still exists, and still exerts its debauching tendencies on every governmental agency.[1]

Mr. Ammon McClellan, executive director of the League of Distilled Spirits Rectifiers, stated in April, 1935, that reports reaching his office indicated that "there is just as much illicit liquor manufactured and sold in this country as there was shortly after repeal of the Eighteenth Amendment. It is variously estimated that illicit channels supply from 50 to 60 per cent of the alcoholic beverage demand."[2] In a study of liquor taxes and the bootlegger prepared for the National Municipal League, Mr. Paul Studenski stated that "the consumption of bootleg liquor, both domestic and smuggled, in this country, may be nearly as large today as the consumption of the taxpaid product."[3]

The Machinery of Enforcement

Although state and local governments must take notice of the criminal activities of the bootlegger, the chief responsibility for suppressing the illicit liquor traffic falls on the United States Treasury Department. The Alcohol Tax Unit of the Bureau of Internal Revenue was organized on May 10, 1934, to take over the work of the Bureau of Industrial Alcohol which had succeeded the old Bureau of Prohibition. Supervision of the legitimate distilled spirits industry to see that no portion of the liquor escapes taxation constitutes the major task of the Alcohol Tax Unit. About two-thirds of the Bureau's personnel is engaged in testing, weighing, and accounting for every gallon of liquor which is legally manufactured. Taxes are collected when the liquor is withdrawn from the manufacturing plants and sent

[1] As quoted by the Hon. Emanuel Cellar at a hearing of the Ways and Means Committee, May 13 and 14, 1935.

[2] Quoted in the New York *Times*, April 14, 1935.

[3] Paul Studenski, *Liquor Taxes and the Bootlegger*, published by the National Municipal League, Jan., 1935, pp. 67-68.

on its way to consumers. The Treasury's storekeeper-gaugers keep under lock the liquor which is sent from stills to storage rooms and they alone possess the keys. When the liquor goes to the packaging rooms it is still under full command of the Treasury officials. It is now, as always in the past, next to impossible to beat the government's system of tax collection at legal plants.

These methods of supervising legal manufacture are in the main the same as those used prior to national prohibition. The new protective measures adopted since repeal provide (1) that distilled spirits may not be shipped to wholesalers or retailers in bulk but only in the original bottle packages, (2) that identifying marks must be blown into the bottles showing a number which identifies the maker of the bottle, the maker of the liquor, and also a warning to consumers of a penalty for re-use of the bottles, and (3) that serially numbered strip stamps be placed over the necks of bottles showing that the excise tax has been paid.

A post-repeal provision designed particularly to aid the Treasury in maintaining a check on illicit production requires that makers of substances used in the manufacture of distilled spirits, such as molasses, corn sugar, and other sugars, shall render an account of the quantities of materials produced and furnish the names and addresses of persons to whom they are sold.[4] This requirement has materially aided the Alcohol Tax Unit in its law-enforcement work. Recently, however, the U. S. District Court of Western Kentucky dismissed an indictment based on failure to comply with this law, holding that "the Act must fail because it can only be administered by the exercise of arbitrary power."

Suppression of Illicit Manufacture

Approximately one-third of the Alcohol Tax Unit's personnel, some 1,400 agents, are engaged in what may be

[4] Joint Resolution, No. 71, 73rd Congress passed June 18, 1934, 48 Stat. 1020.

called law-enforcement work proper. These agents maintain a country-wide search for illicit stills and untaxed liquor that is in storage, in transit, and in the hands of retailers. This unit also keeps a lookout for counterfeit strip stamps, fake labels, and stocks of bottles intended for re-use in violation of law. The coast guard, which is also under the Treasury, devotes much time to prevent smuggling of liquor into the country from the sea, and the customs service watches for smuggling by land from Canada and Mexico. All these police activities are undertaken by the Treasury as a means of protecting the revenues and not primarily as an attack on criminality.

The Alcohol Tax Unit, coast-guard and customs service have been competently directed. Enough good work has been done to give encouragement to Treasury officials in their incessant war on the bootlegger, but they are still confronted with a colossal task. Secretary Morgenthau has accepted the challenge of the bootlegger as a tax evader and in a moment of enthusiasm for the police job, which was new to him, declared that he would lick the bootlegger or lay down his office and go home. Mr. Morgenthau at least has the satisfaction of making steady improvement at licking some of the bootleggers some of the time.

What actual progress has been made in the war on bootleggers and what are the yardsticks by which this progress can be gauged? Treasury officials have attempted to correlate these indices, *viz.* (1) the number of seizures of illicit stills, (2) the consumption of raw materials used in the manufacture of distilled spirits, and (3) the rate of consumption of taxpaid liquor as shown by the statistics of withdrawals from distilleries and rectifying plants. While we believe these to be imperfect yardsticks, the figures are illuminating in that they reveal the magnitude of the bootleg problem.

Let us examine the record of still seizures by federal officers in twelve states for the twelve-month period ending June 30, 1935:

TABLE VIII

STILL SEIZURES FOR THE YEAR ENDING JUNE 30, 1935[1]

Twelve States	1934						1935					
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
Ill.	22	50	28	29	29	32	37	24	44	43	37	30
Md.	42	41	29	21	16	35	41	33	46	32	33	28
Mass.	7	10	5	4	5	7	6	3	22	6	3	7
Mich.	31	16	33	30	33	35	32	27	82	43	22	28
Mo.	33	28	41	31	29	25	40	51	36	33	20	28
N. J.	10	17	29	21	16	28	34	16	37	47	35	17
N. Y.	42	47	52	62	37	52	56	58	92	64	52	58
Ohio	25	30	46	38	36	40	44	57	139	70	61	64
Pa.	20	17	29	31	22	12	27	35	62	54	32	44
Va.	35	34	34	50	28	39	53	77	90	58	71	80
Wash.	9	7	7	10	13	12	6	12	11	8	7	11
Wis.	17	10	21	25	35	29	24	16	62	35	16	28
Total for 12 States	293	397	354	352	299	346	400	409	723	493	389	423

Total for last six months of 1934................ 1,954
Total for first six months of 1935................ 2,847

[1] Absolute figures are derived from graphs and may show inaccuracies of one or possibly two units.

Taking the country as a whole, the results of enforcement work by the Alcohol Tax Unit shown by six-month periods from July, 1934, through December, 1935, are as follows:

TABLE IX

FEDERAL ACTIVITIES AGAINST BOOTLEGGERS: JULY, 1934–DECEMBER, 1935

	July, 1934, through December, 1934	January, 1935, through June, 1935	July, 1935, through December, 1935
Stills seized..........	7,086	8,626	8,054
Persons arrested.......	14,177	17,448	16,548
Convictions obtained...	5,729	9,379	9,142

Treasury officials took pride in the increased number of seizures and arrests and concluded that the bootlegger was "definitely on the way out." Is it not equally logical to conclude from these figures that the bootlegger was on the way back, his business having been sufficiently remunerative in the past and promising for the future to enable him to make replacements of seized stills so fast that, month after month, the enforcement officers found more and more to do?

A total of 16,680 stills were seized by agents of the Alcohol Tax Unit throughout the entire country during the year 1935. The average cubic capacity of seized stills is estimated to have been in the neighborhood of 180 gallons. Four changes of mash can be put through a still in a day, and, inasmuch as stills are operated on a twenty-four-hour basis, the average daily mash capacity of a seized still was around 720 gallons. This quantity of mash would produce approximately 100 gallons of liquor. The total *daily* productive capacity of the 16,680 stills was 1,668,000 gallons of liquor. Assuming that the stills were operated for an average period of three weeks before seizure, the illicit production was around 35,000,000 gallons. We regard the three-week-average operating period as a conservative estimate and one that is highly flattering to the Alcohol Tax Unit. If the interval between the commencement of a still's operation and its seizure was on the average not more than twenty-one days, the enforcement officials would indeed be entitled to praise for swift action. The above estimate does not include the liquor produced by the very large number of stills seized by state enforcement officers and takes no account of stills installed and operated during the year which escaped both federal and state officials.[5] Unless one is ready to believe that none escaped, the above production estimate must be boosted by perhaps 5,000,000 gallons,

[5] During the nine-month period, April to Dec., 1935, the law-enforcement unit of the Ohio Department of Liquor Control seized 1,063 stills ranging in mash capacity from 15 gal. to 2,500 gal.

making a total of 40,000,000 gallons. The taxpaid withdrawal of distilled spirits during the same twelve months amounted to 82,816,000 gallons.

Other Indices

The production of molasses and corn sugar, which are the principal raw materials used by the illicit distiller, has shown a substantial decline. The Treasury thinks this means that the bootlegger has been forced to curtail production for want of materials. It may mean, however, that he has learned how to bootleg his raw materials or that he is using quantities of higher-priced sugars not so accurately checked by the Treasury. It is not likely that in 1935 he would build stills in numbers exceeding those built and seized in 1934 unless he were able to obtain raw materials necessary in their operation.

Finally, the Treasury points to steadily increasing tax collections from legally produced liquor and draws the inference that the increased consumption of legal liquor in 1935 was at the expense of the bootleggers' total volume of business. We do not know, however, to what extent the increased consumption of legal products is to be accounted for by increased general buying power which has raised the consumption indices of other commodities. Certainly the legalization of the sale of liquor after July, 1934, in Florida, Idaho, Maine, Nebraska, North Carolina, South Carolina, South Dakota, Utah, West Virginia, and Wyoming has had an important part in increasing the consumption of taxpaid liquor.

There are no reliable estimates of the amount of spirits, chiefly straight alcohol, which is smuggled into the country. Considerable quantities of Belgian alcohol are seized from time to time in "rum-runner" vessels and in trucks after landing. The total probably runs into several millions of gallons a year. In March, 1935, while making a plea for restoration of approximately $7,000,000, which had been cut from the 1935 appropriation to the coast guard, Mr.

Morgenthau pointed to the increase in smuggling operations. He said in a statement to the Ways and Means Committee that "thirty-nine foreign vessels are presently known to the coast guard to be regularly engaged in the illicit liquor traffic." In February, 1935, the coast guard spotted twenty-two such vessels at one time off the coast beyond our customs waters, safe from seizure under existing international law. A year previously only two vessels were observed. Smuggled alcohol of 190 proof can be laid down on the coast at $0.50 a gallon.[6] Two and a half gallons of whisky can be made from one gallon of this alcohol, at a saving of $5.00 in federal excise taxes and, in states such as New York, New Jersey, and Massachusetts, which have a $1.00 tax, of $2.50 in state excise. The availability of alcohol smuggled from off the coast of Massachusetts may account for the small number of stills seized there.[7]

The Bootlegger's Resourcefulness

The business the bootlegger conducts is as highly organized since repeal as it was during prohibition. When one road is closed to him he takes another. If the maintenance of large stills becomes too hazardous, he encourages both city dwellers and farmers to set up small stills and a collection system is inaugurated. If raw materials become scarce he will resort to the "washing" of denatured alcohol. Supplies of labels, bottles, and alcohol cans are stored in separate places so that a single seizure will not interfere with the entire business. Large trucks and cars having traps are kept in different places with their loads of alcohol and whisky. The trucks are not moved until empty; the trapped cars make daily trips. A garage will be used as a "drop" for several months. The more active drops are changed every month or two in order to avoid detection. The bootlegger suffers a good many losses but his large profits enable him

[6] In June, 1936, according to Mr. Morgenthau's statement to the press, there were no rum runners off the coast.

[7] As shown in Table VIII, p. 206.

to sustain them and still keep in business. The widespread unemployment has of course contributed enormously to illicit distilling on a small scale by persons who can make a precarious living at it and perhaps in no other way.

Regardless of whether the volume of illicit liquor reaches 50 per cent of the total amount consumed or is only 25 per cent, the amount is so large that it interferes greatly with efforts to exercise any form of control over legal sales of alcoholic beverages. The bootlegger's unfair competition is a demoralizing factor in the legal trade and his cheap goods constitute a corrupting influence on a large number of retailers and on consumers who keep their silence about tax evasion. The bootlegger not only defrauds the government of taxes but also undermines efforts to establish principles of fair dealing in the trade and faithful observance of all liquor laws and regulations.

Present Achievements Insufficient

We do not wish to detract from the credit due to law-enforcement officers for their successes in combating the bootlegger. The seizure of 16,680 stills, and conviction of 18,521 persons by the federal authorities during a single year is a good showing. But these huge figures give little encouragement for the belief that we are making satisfactory headway in the prevention of criminality associated with liquor. The bootlegger is too firmly entrenched. Two and one-half years after repeal he is found to maintain one-half or more of the business he enjoyed during prohibition.

Two courses are open which might put the bootlegger out of business. One is to make a substantial reduction in liquor taxes. It is not likely that with their present need of revenue governments will move toward this reduction. Enlargement of our law-enforcement personnel is, therefore, the necessary alternative. Law-enforcement officials concentrate on their successes and exclaim that they have the bootlegger on the run. This weakens their position in asking for more

men. It can be said with equal truth, however, that the bootlegger has the law-enforcement officials on the run. The situation is not unlike that confronting an undermanned fire department. It can do good work at a small fire and succeed in extinguishing the blaze. But with equally competent work at a large fire it will fail. At present we lack the police man power to defeat the bootleggers; we can eliminate some of them and only harass others. The Alcohol Tax Unit should have at least a thousand additional men. State liquor law-enforcement units should also be considerably increased. The law-enforcement units of the New Jersey and Ohio liquor-control authorities have been well manned and intelligently directed. If bootlegging seems to be unusually widespread in these states, it is because the active state enforcement units make frequent exposures of its existence. The Pennsylvania Liquor Control Board's competently directed licensing and enforcement unit was for two years undermanned, but a large increase in personnel was authorized during the early part of 1936. The net cost of additional enforcement personnel is likely to be nil, inasmuch as the displacement of the untaxed supply by taxpaid liquor pays the salaries of new enforcement officers several times over. But the states, for the most part, have been only mildly interested in liquor-law enforcement, and they have disliked dipping into revenues from the legal business to provide the means for driving out the bootlegger and for revoking the permits of his licensed customers.

Violations by Licensed Liquor Dealers

With each issuance of a liquor license a new law-enforcement hazard is created. The licensed dealer may purchase a portion of his liquor from bootleggers; he may sell alcoholic beverages of a kind not covered by his license, may make prohibited sales to minors and intoxicated persons, sell at prohibited hours, or tolerate gambling, prostitution, and disorder on his licensed premises. Although a majority of licensed dealers are scrupulously observing the law, vio-

lators are known to be numerous. All dealers have to be watched, at any rate, and their licensed premises are being inspected, if only irregularly, by federal, state, and local authorities.

Legal Screen for Bootlegged Goods

The legalization of liquor selling was in a way a great boon to the bootlegger. Formerly he had to deal directly with a great number of consumers and with speak-easies. He was exposed at many points and he had to pay large sums for the protection of his outlawed business. Now the business in which he engages is not outlawed; only his participation in it is illegal. Formerly all alcoholic beverages, except a negligible quantity of medicinal liquor, was seizable as contraband goods. Now untaxed liquor alone is contraband, and when it gets into the serving bottles of an on-sale licensee, or when it reaches the shelf of a package store dealer with its counterfeit strip stamp and label, it is lost amidst the legal supplies.

After repeal the bootlegger was quick to take advantage of the legal screens behind which he could hide while carrying on his business. In many instances former bootleggers obtained liquor licenses. Some of them doubtless have been content to deal exclusively in unadulterated, taxpaid liquor. Others sought licenses as covers which are most useful in shielding traffic in illicitly produced liquor. Not all the bootleggers have licenses and not all licensees who now handle a certain amount of illicit liquor were formerly bootleggers. The system, however, works the same regardless of the previous experience of the entrepreneurs.

A year after repeal a responsible member of the New Jersey Retail Liquor Dealers Association estimated that 60 per cent of the liquor sold by saloons in the locality with which he was acquainted was illicit. Some of the retail package stores were also said to be "palming off a good deal of untaxed liquor on the public."

The saloon keeper or licensed restaurant proprietor can

make approximately thirteen gallons of whisky from a five-gallon can of alcohol. This product is not greatly inferior to the cheapest grades of legal whisky which themselves contain a high proportion of neutral spirits. The profits on five gallons of bootlegged goods, when cut and blended and sold by the drink, amount to some $20 or $25 more than the profits which could be realized from the same quantity of legal goods.

As we have seen in an earlier chapter, there are many complaints about the sale of spirituous beverages by persons licensed to sell only beer or beer and wine. The practice of occasionally selling spirits as an accommodation to a regular beer customer often opens the way to widespread operations as a speak-easy for stronger drinks. One step leads to another so that the beer licensee who begins with occasional cheating ends by purchasing spirits from a bootlegger—he dares not buy from legal suppliers for fear of being checked—and selling regularly to known customers.

During the six-month period from September, 1935, to February, 1936, agents of the Alcohol Tax Unit, aided by inspectors furnished from work-relief rolls, inspected 321,-029 premises covered by licenses to sell alcoholic beverages. Violations totaling 40,514 were discovered. See table on page 214.

Possessing unstamped distilled spirits and refilling bottles are the most serious violations. Ten thousand instances of these violations in a six-month period reveal the extent to which legal licensees are using bootlegged liquor along with legal goods. We do not know the number of license revocations during this period, but judging from the known cancellation rate for possession of untaxed liquor in a few states, the revocations cannot be more than a small fraction of ten thousand.

The federal authorities must be content to collect fines from offenders and leave them in possession of their occupational stamp tax which, though it is in the nature of a license, is not revocable. The federal inspections are made solely as a means of protecting the revenue; it is the task

TABLE X

FEDERAL VIOLATIONS BY LICENSED DEALERS: 1934–1936

Nature of Violation	September 1934 to February 1936, incl.	
	Number	Per Cent of Total
Failure to have federal tax stamp:		
Retail dealers	14,626	36.1
Wholesale dealers	1,009	2.5
Failure to post tax stamp	1,909	4.7
Unstamped distilled spirits	8,289	20.5
Unattached strip stamps	846	2.1
Refilled bottles	2,147	5.3
Failure to destroy beer stamps	6,658	16.4
Unstamped beer barrels	1,542	3.8
Failure to destroy wine stamps	3,347	8.3
Rectifying without special tax stamp	141	0.3
Total	40,514	100.0

of state licensing authorities to weed out dishonest licensees. On first thought it would appear desirable to provide for cancellation of the federal stamp tax in order to eliminate the legal outlets for illegal liquor. But this would be an encroachment on the jurisdiction of state licensing officials. It would give rise to conflicts and confusion of responsibilities. From a law enforcement point of view, the responsibility for issuing and suspending or withdrawing the license privilege should be in the same hands.

The extensive violations disclosed by federal inspection show clearly that there is great room for improvement in the disciplinary activities of state licensing officials. They are altogether too tolerant of cheating by licensees, too hopeful of persuading them by threats of disciplinary action to operate their businesses honestly.

The state and local authorities are exclusively responsible for dealing with prohibited sales to minors and intoxicated persons. It is their duty also to see that licensees do not

sell on forbidden days and after closing hours. Gambling, prostitution, and indecent entertainment, sometimes tolerated or even encouraged in licensed places as a means of drawing customers, are offenses which on their own account call for police action, but whenever permitted on licensed premises they also constitute valid grounds for revocation of a liquor license.

Revocation of Licenses

The real test of the efficacy of a license administration lies in the use it makes of the power of revocation. Revocation is the only reliable and complete remedy for violations; harassment with warnings and threats, and the infliction of occasional minor penalties serve only to give the business a bad name and fail to bring about strict observance of the law. Revocation of a license not only eliminates the violator who is caught but also has a strong disciplinary effect upon all other licensees in the same community. "A revocation," remarked one able administrator, "is worth fifty routine inspections."

If the right to revoke is weakly exercised, the multiplication of regulatory restrictions has little effect and supervision amounts to no more than a long-drawn-out hide-and-seek game. When a licensing authority temporizes with violators it fails in two important respects. First, the effect of its inspection system is largely nullified and its inspectors are exposed to the corrupting influence of offending licensees who will offer to pay them for closing their eyes to violations or for preparing botched accounts of observations. Second, the lenient licensing authority misses a golden opportunity to raise the standards of the liquor-selling business to a point where only persons of unquestioned trustworthiness enjoy the license privilege. When undesirable persons are rigorously excluded, the business will enjoy a good name and thoroughly reliable men will more readily engage in it.

The New York State Liquor Authority insists on making

a special point of the fact that it is an administrative licensing agency, and that it is not and should not be a law-enforcement body. Yet it makes the observation in its annual report for 1935 that while some of the offending licensees

> have occasionally been arrested and prosecuted by local police agencies, the power of revocation vested in the State Liquor Authority has been the most effective, and almost the only, check upon these offenses. [The report goes on to say that] in the main, enforcement of the law by local police departments and minor courts has been disappointing. This is particularly true in the smaller communities, perhaps because of the intimacy of acquaintance existing between peace officers and licensees.[8]

The right to revoke is in our opinion the only enforcement weapon needed for the elimination of violations by licensees, and the licensing administration should be the principal law-enforcement agency.

Steps Leading to Revocation

Regardless of whether a licensing authority is timid or firm about the matter of revocations, the grounds must first be clearly established in accordance with the law as it stands in a given state. Sometimes the law on getting the evidence required to substantiate proof of violations presents difficulties which weaken the power of control boards to make revocations. What violations should call for automatic revocation of a license and what should be subject to the exercise of discretionary power? What rights and powers are needed for detection of violations and what evidence should be regarded as sufficient for revocation?

Our study of this problem has convinced us that the first requirement is that the license-issuing authority should have the right to inspect the premises of a licensee at any time of the day or night, during business hours, or whenever the premises are unlocked and occupied by the licensee or by his

[8] Report of the State Liquor Authority of New York for the year 1935. Legislative Document (1936) No. 50, p. 8.

employee, or when any person is making delivery of goods. In no case should a search warrant be required for access to the licensed premises. Furthermore, no part of the building which is directly connected with the licensed establishment and used for storage should be exempt from inspection. To some persons this recommendation will sound like a denial of constitutional rights governing search and seizure. We do not believe that the ordinary safeguard against search should obtain in respect to places licensed to sell liquor. The liquor-control act should contain an express provision authorizing the control board's inspectors to make their investigations without search warrants.

Waiver of Immunity from Searches

In order to avoid complications in connection with inspections, which amount to searches of licensed premises, it is desirable, therefore, to stipulate in the liquor-control law that applicants agree to waive their constitutional protection against such searches. This has been done in Maryland. In that state, the applicant must furnish on appropriate forms certain information and statements, among which is a statement authorizing the

> Board of License Commissioners of the county or city in which the place of business [of the licensee] is located, its duly authorized agents and employees, and any peace officer of such city or county, to inspect and search, without warrant, the premises upon which the business is to be conducted, and any and all parts of the building in which said business is to be conducted, at any and all hours.[9]

When this act was tested, the Maryland Court of Appeals held that "where taxability and unlawful possession are sufficiently alleged in a complaint, the licensee is barred from contending that the search without warrant is unlawful."[10]

Similarly the South Dakota Liquor Control Act of 1935

[9] Maryland, Laws of 1935, Chap. 2, Sec. 5.
[10] Zukowski v. State, Decision as of Nov. 22, 1934.

provided that an applicant for a liquor license shall answer affirmatively the following question:

> Do you further agree that your premises for the purpose of the search and seizure laws of the State of South Dakota shall be considered public premises and that such premises and all buildings, safes, cabinets, lockers and storerooms therein will at all times . . . be open to inspection.

The act also stated that a liquor license shall constitute a "contract" between the licensee and the state, entitling the state

> to enforce all the provisions of the law governing the sale of intoxicating liquor to the extent of inspection of his premises and books at all times.[11]

Federal courts have ruled on more than one occasion that individuals may without question waive their rights in the matter of protection against search and seizure. In the case of United States vs. Shules, the court had this to say: "That the constitutional immunity against unreasonable search and seizure is a personal right capable of waiver is too well settled to require the citation of authorities."[12]

The right to inspect licensed premises without search warrant should be established, we believe, as the keystone of a liquor law enforcement code. A licensee becomes a party to violation of the law if he purchases or sells untaxed liquor. If he makes the claim that he has been deceived by the person who sold him illicit liquor, he should be required to expose the seller. If he refuses or if his business methods are so irregular that he cannot identify the source of his purchases, he should be excluded from doing business. A person licensed to sell only beer or beer and wine has no just reason for keeping spirits at his licensed place of business, and possession of them, whether taxpaid or not, should be cause for revocation.

In a number of states, evidence of sale is required to

[11] South Dakota, Laws of 1935, Senate Bull. No. 168, Sec. 19.

[12] United States vs. Shules, 65 Federal (2nd) 780.

establish the guilt of a person suspected of making illegal sales. But it is very difficult for police agents to make purchases; sellers are wary and soon come to be able to identify inspectors. The sensible way to prevent prohibited sales is to make illegal the mere possession of beverages not covered by a license. The Virginia Alcoholic Beverage Control Board early adopted a regulation providing that "no alcoholic beverages shall be kept or allowed to be kept upon any premises except such beverages as the licensee is authorized to sell." It is important to insert the words "or allowed to be kept" for, otherwise, a licensee when caught with prohibited liquor will claim that it is the personal property of an employee or of a friend who asked that it be placed in safekeeping for him until his return. It is not unreasonable to require a licensee to police his own establishment to the extent of seeing that prohibited liquor is entirely excluded from the premises. If he is unable to do this he is not a fit person to hold a license.

Other Violations

When it comes to derelictions involving sale to minors and intoxicated persons, and sale at forbidden hours, a case for revocation is not always easily established. Honest mistakes are likely to be made by a licensee, particularly in determining the age of a minor. It is also at times difficult to distinguish between intoxication and its developing stages. And as for closing hours, there is always the clock that is slow or stopped, or the drink that was sold and paid for before the closing hour by the customer who was called out of the room and so kept from drinking it earlier.

Licensing authorities have to guard against capriciousness and unwarranted severity in dealing with illegal sales where reasonable doubt of the licensee's culpability can be raised. It is sometimes even more difficult to place the blame for the presence of prostitutes and gamblers, and for the disorderly conduct of patrons. Although the licensee is to be held responsible for the general character of his place

of business, there are limits beyond which he cannot be expected to go in guaranteeing the character and reputation of persons who visit his public place of business. Granting that revocation cannot be summarily invoked for single instances of violations of the kind just mentioned, it remains true that frequent recurrences call for drastic action in the form of revocation.

In dealing with miscellaneous minor violations the practice of issuing formal warnings should be adopted, each warning to be acknowledged by the licensee and entered upon a permanent complaint record at the office of the licensing authority. When the record of complaints and warnings reaches a total of four or five within six months, let us say, the license should be revoked. The cumulative record is what should count and not the last single item which, considered alone, might not seem to justify revocation. Those licensees who are forever giving trouble and require constant watching should be mercilessly weeded out. The more uncompromising a control board is in its stand on law enforcement, the more stable will be the entire liquor-selling business in its jurisdiction. The business will almost certainly deteriorate and lose public support when a board is lenient and indecisive in its disciplinary action. Licensees know where they stand with a firm control board, and, in the long run, we believe, they are better contented with toeing the mark than doing otherwise. The great majority will gladly abide by a strict form of control so long as they feel confident that every competing licensee is held in line.

Judicial Appeals

In a number of states the actions of the liquor-control board in granting or revoking licenses are subject to review by the courts. This procedure seriously undermines the whole supervisory system. A few states, recognizing the need for dealing conclusively with revocations in the first instance, have wisely decided against giving the right of

appeal to the courts from the licensing body's decision. The Virginia law even rules out mandamus proceedings: "The action of the Board in revoking any license pursuant to the provisions of this section shall not be subject to review by any court nor shall any mandamus or injunction lie in any such case."[13] A Minnesota court, ruling on this question of appeal, held it to be "elementary that a license to sell intoxicating liquors is granted in pursuance of the police power, and not of the taxing power of the state. Its primary purpose is not revenue but regulation. In the exercise of that power a license may be revoked without judicial proceedings."[14]

In Pennsylvania the County Courts of Quarter Sessions alone have the right to revoke licenses; the Board of Liquor Control appeals to those courts for orders of revocation. Of 492 cases appealed to the quarter-sessions courts in 36 counties of the state during 1935, the liquor-control board was reversed in 64.4 per cent and sustained in only 20.9 of the appeals; the remaining 14.7 per cent were withdrawn or were pending at the end of the year. This record shows on its very face that in Pennsylvania offending licensees are being temporized with. With a situation of this kind it is impossible to bring about progressive improvement in the quality and reliability of licensees; it is scarcely possible to withstand deterioration.

The courts are not responsible for approving license applications or for supervising the licensed places thereafter. Since they have no responsibility for maintaining license standards they should have no power to set aside the actions of those who have that responsibility. A court reversal of a revocation order is paralyzing in its effect on license supervision. We know of the demoralization in a police department that follows upon a court order setting aside the disciplinary action of a police commissioner. The same holds true in respect to disciplinary supervision of

[13] Va. Laws of 1934, Chap. 94, Sec. 25.
[14] Claussen v. City of Luverne, 103 Minn. 491.

liquor licenses. The court is nowhere given the right to oust a licensing body; it is illogical to give it the right to nullify its particular actions of a discretionary nature.

If a licensing body is unfair, vindictive, or slothful in its handling of disciplinary cases, the situation is readily apparent without a series of court contests. The remedy lies in removal of the unworthy administrators. We think, however, that there is little chance of groundless revocations by licensing bodies. Errors will be made in isolated cases, of course, but the resulting injuries should be endured for the sake of gaining the general public benefits which flow from vigorous discipline and the exercise of full discretionary power. Moreover, there is no reason to suppose that the errors and injuries will be more numerous than they would be under the less desirable system of limited discretion and divided authority. It is easier to obtain trustworthy licensing authorities in whose competence and fairness everyone will have faith than it is to obtain high standards of licensing through judicial intervention in administrative matters.

The Role of Local Police

The police of local governments, being general police officers, are charged with enforcing all federal, state, and municipal laws. Hence it is their duty to take cognizance of any violations of liquor laws and regulations within their jurisdictions. Liquor offenses may be grouped in three main categories:

1. Bootlegging, including illicit manufacture and illegal transportation or unlicensed sale of either illicit or legal liquor.
2. Violation of the liquor-control statutes, administrative regulations and municipal ordinances by licensed dealers, as for example selling to minors, keeping open after permitted hours and giving entertainments prohibited on licensed premises.
3. Offenses against the public peace and safety attributable to intoxication, including drunken driving, assaults, and disorderly conduct.

The local police and state constabularies are exclusively responsible for dealing with this third group of offenses; they share with inspectors of state licensing bodies the responsibility for seeing that licensees obey the law; they also have the duty of suppressing bootlegging, but in this field they have a lesser role to play owing to limited territorial jurisdiction and to priority of the federal and state interests.

The extent to which the local police are called upon to supervise licensees varies from state to state according to the number and distribution of enforcement officers employed by the commonwealth. If licensing is in the hands of local authorities or if there are no state enforcement officers, the entire task of license supervision falls to the local police. Where the state provides a sizeable field force of liquor-control inspectors there invariably arises a problem of divided responsibility between local police and state officials. The question is whether the police shall make special efforts to discover offenses or shall deal only with violations which they stumble upon in the course of their ordinary duties, leaving most of the work to state inspectors.

There is no entirely satisfactory way of arranging a division of labor in the discharge of common duties of law enforcement. It is necessary for one group to take the lead. Since the licensing authority's inspectors have to deal only with liquor-control matters and the police have many other duties, it generally happens that the latter pay scant attention to the supervision of licensed places. They desire not only to be relieved of an extra burden but also to avoid the conflicts which are so likely to arise when separately controlled law-enforcement organizations perform overlapping duties.

State Inspectors Needed to Effectuate Uniform State Policy

We are mindful of the prevalent costly practice of creating a new body of governmental inspectors wherever a new regulatory measure is introduced. Nevertheless, we think there is good reason for the creation of a law-enforcement

unit under the direction of a state licensing body. The task of liquor licensing consists, to an unusual degree, in the exercise of discretion. Authorities must use discretion in granting or denying the license privilege to applicants in the first place, and subsequently in determining whether the privilege should be retained or surrendered. Licenses are granted on condition that the holders will comply with established policies and standards. It is desirable that the state authorities who fix the standards should also be responsible for seeing that they are faithfully observed throughout the license term. If policies are laid down by a state body and their enforcement is left entirely to local police, there is no way of ascertaining whether or not standards are being uniformly maintained.

Cooperation of Local Police

Even though the state control body assumes the primary responsibility for liquor law observance it is still the duty of the police to cooperate. It is incumbent upon local police administrators to devise procedures for routine observations of licensed places and for reporting these observations regularly to the central licensing body; detectives and other plain-clothes officers should be on the alert for evidence of unlicensed sale of liquor and should take summary action when any is found; commanding officers should furnish information on the fitness of applicants for licenses and should submit any objections they may have to proposed locations for licensed premises; and lastly, the local police should join with federal and state officers in detecting illicit manufacture of liquor.

Making a plea for greater cooperation among independent official bodies is generally as futile as it is commonplace. Cooperation cannot be won by exhortation. But it can be achieved by good example. In liquor-law enforcement the example should be set by the state licensing authorities. Mr. D. Frederick Burnett, whose views on

liquor-control matters are entitled to great respect, has observed that local police will as a rule cooperate generously with a state licensing body whenever they are convinced that the latter is fully determined to enforce the law without fear or favor. If, however, a licensing body temporizes with violators, the police spare themselves the pains of cooperation. Moreover, licensing administrators who are content to demand, rather than take the trouble to solicit, the aid of the police will not obtain, nor will they deserve, much help from local officials. We are convinced that far too little attention is paid this important matter in administering law-enforcement activities. If we were called upon to select the head of a state enforcement unit and had to make a choice between a man, on the one hand, who knew a great deal about the techniques of enforcement but was wanting in the ability to gain cooperation of others, and, on the other hand, a man who knew little about enforcement but had a gift for working with independent officials, we should not hesitate to choose the latter. A chief lieutenant can be found to supply the needed technical knowledge. Sometimes a man possessing both qualities can be found. Mr. Clyde E. Smith, head of the Pennsylvania division of licensing and enforcement, is an example.

It must be admitted that the local police cannot always be relied upon to enforce the law against the friends and political supporters of reigning local administrators. This is one of the reasons for having a body of state inspectors whose duty it is to see that uniform standards prevail throughout the state regardless of difference in police efficiency and diversity in local attitudes. It is a great mistake, however, for state licensing authorities to neglect the cultivation of local law-enforcement officials merely because a few police establishments are unresponsive. Joint surveillance of the liquor traffic is essential, and the ability to establish it is a definite mark of a licensing body's resourcefulness and ability.

Illegal Shipments into Dry States

The once formidable task of protecting dry states has been steadily diminishing since repeal. After two years there remain only five states to be guarded against liquor shipments from outside their borders. These are Alabama, Kansas, Mississippi, Oklahoma, and Tennessee. Georgia forbids traffic in spirits but admits the sale of beer and wine.

It is unquestionably true that the citizens of dry states are not of a single mind about vigorous enforcement of their prohibition laws. Many persons are untroubled by under-cover importation or misrepresentations relative to medicinal liquor, so long as open sale within their state is prohibited. Indeed, some seem to feel that the infiltration of limited amounts of liquor is a good thing because it serves to pacify the wets and thus tends to lessen agitation against prohibition. Recognizing this situation, the federal government has taken a realistic view regarding its responsibility toward dry states. It proposes to undertake the control of liquor shipments into them only to the extent that they wish the shipments to be controlled. This is to be determined by what the dry states are willing to do on their own account in facilitating the enforcement of either partial or complete prohibition.

Federal Aid to Dry States

The Liquor Enforcement Act of 1936 repealed the Reed Amendment and provided a new basis for federal enforcement of the Twenty-first Amendment.[15] Shipment of intoxicating liquor containing more than 4 per cent of alcohol by volume into states contrary to their prohibitory laws is made a federal offense. However, under the new law the national government requires that the dry states "cooperate to the extent of assuring that a legal shipment must be accompanied by proper documents, or that all shipments are prohibited. Under the bill, the United States does not force a more rigid prohibition upon the states than they

[15] Act of June 25, 1936, Public No. 807, 74th Congress.

choose to adopt."[16] The bill does not affect the federal government's responsibility for suppressing illicit manufacture within dry states or for seeing that shipments of industrial alcohol are not diverted from industrial uses into beverage alcohol.

Admittedly, a prohibition state has the right to make allowance for certain liquor importations as, for example, medicinal liquor or limited amounts receivable for personal consumption and not for resale. But a prohibition state which wishes to admit some liquor should not expect the federal government, unaided, to track down every shipment in order to distinguish between the legitimate and the improper. There can be no reasonable objection to compliance with the federal requirement that states establish a permit system which serves to identify legitimate shipments. The new enforcement act seems to us to be fair to the dry states. If they are sincere about attempting state prohibition they will have federal protection; if not, the national government will be relieved of any responsibility to force prohibition upon them.

Passage of this legislation, however, will by no means entirely solve the federal government's problem in dealing with dry states. A state might adopt the permit system governing liquor importations and still shift the full burden of discovering illegal shipments onto the shoulders of the federal authorities. Similarly, a state which establishes a complete embargo, thus making a permit system unnecessary, might be content to remain inactive in respect to enforcement and yet insist that the government do its full duty.

Subsidy for State Enforcement

We believe it would be advantageous for the federal government to subsidize state prohibition enforcement activities by matching, dollar for dollar, appropriations made by the states. The dry states should be required to create spe-

[16] Quoted from a report, No. 1258, by the Committee on the Judiciary, H. R., 74th Congress, 1st Session.

cial police units which would devote their attention exclusively to liquor-law enforcement. Such an arrangement would enlist state cooperation far beyond the degree assured under the provisions of the recent act. The national government should, of course, reserve the right to set up minimum standards relating to selection of personnel, organization, and administrative procedure, and to see that the enforcement personnel is not called upon to perform extraneous police duties. The state units should be occupied not only with preventing unlawful traffic in taxpaid liquor shipped from wet states but also with stamping out illicit production within their own borders.

It is believed that the subsidy plan would result in a saving of money to the federal government and would bring about better enforcement as well. If the dry states spend none of their own money on this work, they will be little concerned with solving what is, after all, their own problem. If, however, they have an investment at stake, they will develop a much sharper interest in seeing that money is not wasted in faulty enforcement.

Law Enforcement the Final Test

In a very real sense the whole administrative task of liquor control is one of law enforcement. It consists in keeping unauthorized persons from manufacturing or selling liquor and in seeing that those who are given the privileges abide by all of the restrictions contained in statute and regulations. The responsibility for disobedience of law is to be laid at one door only, that of weak and incompetent administrators. Two decades ago, the public believed that the evils connected with the liquor traffic would not or could not be corrected by public officials and that prohibition was the only remedy. A national revulsion against the breakdown of law enforcement was what caused prohibition's repeal. The liquor issues of the future will be decided, as always before, on the basis of success or failure in *enforcement* of whatever kind of control is attempted.

Appendix I

TWENTY-FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES REPEALING NATIONAL PROHIBITION

1. The Eighteenth Article of Amendment to the Constitution of the United States is hereby repealed.

2. The transportation or importation into any State, Territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of submission hereof to the States by Congress.

Appendix II

THE HISTORY OF THE TWENTY-FIRST AMENDMENT

The Joint Resolution paving the way for action on repeal of the Eighteenth Amendment was passed by the Senate on February 16, 1933, by a vote of 63 to 22. It was adopted by the House four days later, by a 289 to 121 vote. In March the Congress passed the Cullen Beer Act, legalizing beverages containing not more than 3.2 per cent of alcohol by weight. This act was signed by the President and became effective on April 7.

By the fifth of December, 1933, thirty-six states had ratified the new Amendment. Repeal became effective at 5:32 Eastern Standard Time when the Secretary of State received notification of the vote of the Utah Convention. Thereupon the sale of liquor became legal in nineteen states, *viz,* Arizona, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin. The remaining twenty-nine states had Constitutional or statutory provisions which prevented the sale of alcoholic beverages. These provisions were repealed during the next two years except in Alabama, Kansas, Mississippi, Oklahoma, and Tennessee.

Appendix III

VOTE ON RATIFICATION OF THE TWENTY-FIRST AMENDMENT

(Repeal of the Eighteenth Amendment)
States shown in order of receipt of ratification notice by office of Secretary of State in Washington, D. C.

State	Date of vote—1933	For	Per Cent	Against	Per Cent
Michigan	April 3	850,546	74.8	287,931	25.2
Wisconsin	April 4	648,031	82.1	141,518	17.9
Rhode Island	May 1	150,297	87.8	20,927	12.2
New Jersey	May 16	573,532	86.3	90,743	13.7
Wyoming	May 15	17,000	85.4	2,900	14.6
Delaware	May 27	45,615	77.2	13,505	22.8
Massachusetts	June 13	436,356	81.7	97,702	18.3
Indiana	June 6	550,902	64.4	304,563	35.6
Illinois	June 5	1,227,668	78.2	341,773	21.8
Iowa	June 20	376,661	60.1	249,534	39.9
Connecticut	June 20	236,742	87.2	34,816	12.8
New Hampshire	June 20	75,965	71.4	30,374	28.6
California	June 27	1,018,004	76.2	318,600	23.8
West Virginia	June 27	218,638	61.6	136,552	38.4
New York	May 23	1,946,532	88.7	247,450	11.3
Arkansas	July 18	67,622	59.5	46,091	40.5
Alabama	July 18	100,269	58.7	70,631	41.3
Oregon	July 21	136,713	65.2	72,854	34.8
Tennessee	July 20	126,950	51.4	120,159	48.6
Arizona	August 8	37,643	76.9	11,323	23.1
Missouri	August 19	503,642	76.2	156,961	23.8
Nevada	May 27	(1)			
Vermont	September 5	41,182[2]	66.7	20,583[3]	33.3
Washington	August 29	364,616	70.7	150,920	29.3
Minnesota	September 12	348,457	65.8	180,796	34.2
Colorado	September 12	133,906	68.0	63,089	32.0
Maryland	September 12	205,130[4]	81.8	45,776[3]	18.2
Idaho	September 19	56,652	58.0	40,977	42.0
Virginia	October 3	99,460	63.0	58,518	37.0
New Mexico	September 19	53,492	77.5	15,541	22.5
Florida	October 10	98,101	80.1	24,317[5]	19.9
Texas	August 26	310,710	61.4	195,340	38.6
Kentucky	November 7	386,653	62.3	234,417	37.7
Ohio	November 7	1,444,033	71.2	584,238	28.8
Pennsylvania	November 7	1,864,411	76.0	583,513	24.0
Utah	November 7	102,224[3]	60.8	65,898[3]	39.2
Maine	September 11	114,792	68.4	53,076	31.6
South Carolina	November 7	33,074	48.0	35,845	52.0
North Carolina	November 7	120,190	29.0	293,484	71.0

[1] Delegates elected for convention. Ratified September 5, 1933.
[2] Vote cast for highest candidate.
[3] Delegates elected for convention.
[4] No convention. Unofficial.
[5] There were also cast 18,407 unpledged votes.

Appendix IV

DIGEST OF STATE LIQUOR-CONTROL SYSTEMS

Alabama—Prohibition

Alabama is a "bone dry" state, forbidding by statute all traffic in liquors of an alcoholic content of more than ½ of 1 per cent, with the exception of non-beverage alcohol and sacramental wines, which can be imported under certain restrictions.

Although Alabama ratified the Twenty-first Amendment, an attempt to modify the state law was defeated by a popular vote of 89,354 to 94,998 in a referendum held on February 26, 1935.

Arizona—License System

Administered by the State Tax Commission. Municipalities may further license, tax, and regulate the liquor traffic, except the wholesale business, within their incorporated limits.

Off-sale licenses for beer and wine are granted only to hotels and restaurants; for spirits, to hotels, restaurants, and general merchandising stores. Clubs, boats, and railroad dining cars must qualify as restaurants. On-sale licensees may also sell in the original package.

There are no provisions for local option.

Arkansas—License System

Administered by the Commissioner of Revenue. Liquors containing more than 5 per cent alcohol by weight may be sold only by the package for off-premises consumption. Municipalities may further license the traffic in liquor but not wine.

A separate beer-license law, also administered by the Commissioner of Revenue, provides for the comparatively free sale of beer of not more than 5 per cent alcohol.

Local-option elections may be held upon the petition of 35 per cent of the qualified voters in any political subdivision, to decide whether liquors over 5 per cent by weight shall be sold within such territory. Elections may not be held oftener than once every three years.

California—License System

Administered by the State Board of Equalization.

Off-sale licenses for beer and wine, and for spirits are granted to retail-merchandise stores. An amendment to the State Constitution made in 1935 permits the on-sale of spirits in hotels, restaurants, and clubs, along with

beers and wines as provided by the Liquor Control Act. Beer, containing not over 3.2 per cent of alcohol, may be sold over bars or in public saloons. On-sale licensees may sell by the package without an off-sale license.

There are no provisions for local option.

Colorado—License System

The Secretary of State is constituted the licensing authority. Retail licenses are granted by the state only after the approval of the local licensing authorities has been obtained.

Licenses for the sale of intoxicating beverages in the original package are granted to exclusive liquor stores and to drug stores. On-sale licenses are granted to hotels, restaurants, and clubs. Bars are forbidden.

A separate license law governs the sale of 3.2 beer under the administration of the Secretary of State. All types of retail stores may obtain an off-sale beer license; on-sale licenses are granted to hotels, restaurants, and clubs. Local licenses are also required.

Connecticut—License System

Administered by a Liquor Control Commission of three members, serving six-year, overlapping terms.

The only control power granted to local governing bodies is the right to determine the hours of sale. Off-sale licenses are granted to exclusive liquor stores and drug stores for the sale of all liquors by the package and to grocery stores for bottled beer. On-sale licenses are granted to hotels, restaurants, and clubs for the sale of all liquors, and to taverns for beer only. Bars are prohibited.

The local-option unit is the town, which is given the right to vote at the annual town meeting, following a petition for such a vote signed by 10 per cent of the qualified voters. Such elections apply either to beer or all alcoholic beverages.

Delaware—License System

The Liquor Control Act provides the mechanism for state-wide control either by license or by monopoly, or a combination of the two, at the discretion of the Delaware Liquor Commission. At present a license system is in effect. But all orders by private licensees must be placed through the Commission. The Commissioner is appointed for a five-year term.

Off-sale licenses for all liquors are granted to grocery stores, delicatessen shops, hotels, restaurants, and clubs. On-sale licenses for beer or for all liquors are granted to hotels, restaurants, and clubs. Taverns are licensed to sell beer by the drink. Bars are prohibited except at clubs.

By Article XIII of the Delaware Constitution, local-option questions are to be submitted "from time to time" by the General Assembly in the four

local-option districts: Sussex County, Kent County, the City of Wilmington, and the remaining part of New Castle County.

Florida—License System

Administered by the State Beverage Department, headed by a Director, who serves for four years, or at the pleasure of the Governor.

License applications are made to the County Tax Collector, and are investigated and passed upon by the County Commissioners, subject to the Director's approval or disapproval. Both counties and municipalities may require licenses.

State-wide sale of 3.2 beer is permitted but stronger beverages are subject to county local-option votes. In wet counties, licenses for package sale are granted to exclusive liquor stores only. On-sale licenses are granted to hotels, restaurants, and clubs. Patrons must be seated. In several counties the on-sale of spirits is prohibited by special legislative enactment. Article XIX of the Constitution of Florida provides that an election shall be held in any county, not oftener than once in every two years, upon application of one-fourth of the voters, to decide whether the sale of intoxicating liquors, wines, or beer shall be prohibited therein. No local-option election may be held on the day of a state or national election.

Georgia—Limited License System

By the referendum of May 15, 1935, the people of Georgia ratified the Beer License Act, legalizing beer of 6 per cent alcohol by volume, and the Georgia Wine Products Act which allows the manufacture and sale of Georgia wine. The Alcoholic Beverage Control Act was defeated by a referendum vote of 81,891 to 82,134.

The licensing authority under the Beer Act is the State Revenue Commission. Local governing bodies may charge additional license fees. There is no tax on Georgia wine.

The only control of wine sales is through regulations promulgated by the Commissioner of Agriculture, whose duty it is to disseminate information concerning the making of wines.

Any county may, upon petition signed by 15 per cent of its registered voters, call an election to determine whether or not the manufacture and sale of such wines shall be prohibited.

Idaho—Monopoly System

Administered by the Idaho Liquor Control Commission composed of three members who serve six-year, overlapping terms.

Spirits and wine may be sold only by the package in state stores and in agencies controlled by the Commission. A purchaser must possess an individual purchase permit.

Beer of not over 4 per cent alcohol by weight is sold freely under a license

system administered by the Commissioner of the Department of Law Enforcement.

There are no provisions for local option.

Illinois—License System

Administered by a Commission of three members serving six-year, overlapping terms. The State Department of Finance is charged with the issuance of the various licenses, upon the direction of the Commission.

Local governing bodies are empowered to determine the number, kind, and class of local retail licenses to be issued and to set the fees; and a local commissioner, either the mayor, president of the board of trustees, or the chairman of the county board, is authorized to serve as administrator of the local regulations.

The Liquor Control Act provides for a single retail license. In general practice, however, the municipalities separate the on-sale and off-sale businesses. All types of drinks may be sold by the glass in hotels, clubs, and taverns, and in restaurants with meals. Bars are prohibited, except "those over which food is served." Off-sale licenses are granted to drug stores, grocery stores, and exclusive liquor stores.

Local option elections may be held once every four years upon petition of 25 per cent of the qualified voters. In cities over 200,000 the unit is the precinct; elsewhere the unit is the municipality. The following choices may be made: the prohibition of the sale of all alcoholic beverages, or beverages over 4 per cent either by the drink or by the package, or beverages over 4 per cent by the drink only.

Indiana—License System

The administrative body is composed of the Excise Administrator, ex-officio, who serves as Chairman, and three appointed Commissioners, who serve four-year, overlapping terms.

County local boards, composed of a representative of the Commission, an appointee of the County Commissioners, and an appointee of the mayor of the largest city, serve in an advisory capacity.

Separate licenses are provided for the sale of beer, wine, and spirits. Hotels, restaurants, and clubs may sell all liquors by the drink to patrons seated at tables or counters, and also by the package. Off-sale licenses for beer and wine are granted to retail establishments, but package sale of spirits is limited to drug stores and exclusive liquor shops. Licenses to roadhouses and night clubs outside of incorporated municipalities are prohibited.

There are no provisions for local option, except that licenses for the on-sale of spirits are not granted to licensees in towns of less than 5,000 until the governing body votes affirmatively to come within the provisions of the Act.

Iowa—Monopoly System

The Iowa Liquor Control Commission, which administers the monopoly, is composed of three members, serving six-year, overlapping terms. The Commission operates state stores, and may appoint agents. There is no on-sale of liquors containing more than 4 per cent of alcohol by weight.

The Commission licenses manufacturers and also issues individual permits, which the customer must present upon making a purchase.

Beer up to 4 per cent by weight is sold under the provisions of a separate beer law administered by the State Permit Board, composed of the Treasurer, Auditor, and Secretary of State. Beer licenses for on-sale and off-sale are issued by city and town councils and by county boards of supervisors in areas outside of cities and towns. The State Permit Board also issues a retail license to these licensees. The State Board may review the action of local authorities in revocation proceedings.

There are no provisions for local option.

Kansas—Prohibition

Article XV of the Kansas Constitution reads, "The manufacture and sale of intoxicating liquor shall be forever prohibited in this state, except for medical, scientific, and mechanical purposes." This article was confirmed on November 26, 1934, by a popular majority of 89,000.

Since Congress declared 3.2 beer "nonintoxicating" in 1933, the status of such beer in Kansas has been indefinite, but it is sold widely, and even licensed in many municipalities. The Kansas Supreme Court has ruled that such beverages must be proved "intoxicating in fact" to be outlawed.

Kentucky—License System

Administered by the State Commissioner of Business Regulation.

The Alcohol Control Act of 1934 raised the nonintoxicating beverage limit to 4.81 per cent of alcohol by weight.

Liquor may be sold only in unbroken packages and may not be consumed on the premises except that spirituous liquors in containers holding two ounces or less may be sold by any licensed dispensary possessing a license to sell spirituous liquor by the drink.

A special act, known as the Local Option Law, provides that an election shall be held in any county, city, town, district, or precinct, upon petition signed by a number of legal voters equal to twenty-five per cent of the votes cast in such territory at the last preceding election. No local-option election may be held in the same territory oftener than once in every three years and may not be held on the day of a primary or general election.

Louisiana—License System

The laws concerning beverages of 6 per cent by volume and stronger liquors are administered by the Supervisor of Public Accounts. A Board of

Permit Appeals, composed of four state officials, hears appeals from the Supervisor's rulings.

On-sale and off-sale licenses are granted to all sorts of establishments for the sale of any or all liquors, but the two types of sale may not be combined.

Municipalities also issue local licenses and charge permit fees, but only to those already licensed by the Supervisor.

Local-option elections may be held once a year in parishes or smaller political subdivisions, upon the petition of 33 1/3 per cent of the qualified voters, to permit or prohibit the sale of intoxicating beverages and also those of not over 6 per cent by volume.

Maine—Monopoly System

The sale of wines and spirits is a state monopoly, under the direction of the Maine State Liquor Commission of three, serving 3-year, overlapping terms.

The package sale of wines and spirits is made in state stores. Hotels may sell by the package to registered guests in their rooms. Beer is sold by the package in licensed retail stores. Hotels and clubs may sell all liquors by the drink; restaurants may sell beer and wine only. The Commission issues all licenses, subject to approval by the municipal officers of the city or town or by the county commissioners of counties where premises are located. The operation of a state store, the granting of wine and spirits licenses, and the granting of beer licenses in a city or town are submitted as local-option questions at biennial elections.

Maryland—License System and County Dispensaries

The State Comptroller issues licenses to manufacturers and wholesalers, and for boats and railroads. Control of other retailers is vested in County License Commissions or the clerks of the courts, depending upon the county. County License Commissioners, where such offices exist, are appointed by the Governor, with varying terms and salaries.

In general, licenses to sell beer and light wines or all liquors by the package are granted to all types of retail stores. Hotels, restaurants, clubs, and taverns are permitted to sell beer, light wines, or all liquors for consumption on the premises by the drink. Hotels and restaurants may also sell all beverages for consumption elsewhere.

In the City of Baltimore, a License Commission of three members, appointed biennially by the Governor, regulates the retail licensees. They have the power to refuse to grant a license, or may authorize the Clerk of the Court of Common Pleas to issue it. The Commission has powers of revocation and suspension, and may limit the number of licenses, further restrict the hours of sale, and prescribe prohibited areas.

In Baltimore off-sale licenses for beer and light wines and for all liquors are granted to all types of retail stores. Licenses for the on-sale of beer

and light wines and for all liquors are granted to hotels, restaurants, clubs, and taverns.

The Counties of Montgomery, Wicomico, Queen Anne's, and Worcester operate county dispensaries.

Local option in small political subdivisions is provided for in some counties.

Massachusetts—License System

The Alcoholic Beverages Control Commission is composed of three members serving three-year, overlapping terms.

In cities there are, in addition, local boards composed of three members appointed by the mayor, serving six-year, overlapping terms. In towns, the selectmen serve as a liquor board. The functions of the local boards is to recommend the issuance, refusal, or revocation of retail licenses, to fix the license fees and the closing hours within the limits prescribed by the law.

Off-sale licenses for all liquors are granted to qualified persons, without restrictions as to the type of establishment. On-sale licenses are granted to hotels, restaurants, clubs, and taverns for the sale of all liquors. Women are not allowed in taverns, and must be seated while drinking in other places.

Local-option questions are placed on the biennial election ballots to determine whether the sale of beer and wine or all beverages may be allowed, in a city or town. Upon petition of 1 per cent of the registered voters, in a city or town, the question of issuing tavern licenses may be submitted in a special election once every two years.

Michigan—Monopoly System

The Liquor Control Commission is composed of the Governor and the Secretary of State, ex-officio, and three members appointed by the Governor, to serve three-year, overlapping terms.

The Commission operates state stores, appoints and supervises agents known as specially designated distributors, and licenses manufacturers, wholesalers, and retailers.

Heavy wines and spirits are sold by the package only in state stores, and in special distributing agencies. Private merchants are licensed by the Commission to sell beer and light wines by the package.

Hotels and restaurants may sell spirits, wines, and beer by the drink. Taverns and beer gardens are licensed for the on-sale of beer only.

The on-sale of spirits is prohibited in those municipalities and townships which did not allow such sale by ordinance within sixty days of the passage of the Control Act or which have not since voted for such sale in an election called by petition of 20 per cent of the qualified voters. Such elections may be held once every four years.

A local-option vote by county may be held once every four years upon

the petition of 20 per cent of the qualified voters to decide whether the manufacture and sale of alcoholic beverages shall be allowed within the county.

Minnesota—License System

A Liquor Control Commissioner, serving a four-year term is the director of the license system for alcoholic beverages over 3.2 per cent by weight. Local governing bodies grant and revoke retail licenses. Off-sale licenses are not effective until approved by the Commissioner. The sale of 3.2 beer is licensed entirely by the municipalities.

Off-sale licenses are granted to drug stores, food stores, and exclusive liquor stores. On-sale licenses are granted to hotels, clubs, restaurants, and in fourth-class cities and villages to exclusive liquor stores. A municipality may own and operate such exclusive liquor stores.

Local-option votes may be taken in counties, except those having a first-class city, at special elections to be held not oftener than once every three years upon the petition of 25 per cent of the votes cast for Governor in the last election. Villages and fourth-class cities may vote at annual elections upon petition.

Mississippi—Prohibition

Mississippi prohibits, by statute, the sale and possession of intoxicating liquors. Beer and wine not exceeding 4 per cent of alcohol were declared to be nonintoxicating and their sale legalized by the legislature.

The Chairman of the State Tax Commission administers the license system, under which 4 per cent beverages are sold freely. Municipalities may further regulate the traffic and issue additional licenses. Counties are granted the right of local option, upon the petition of 20 per cent of the voters, for elections to be held not oftener than once every two years.

On July 10, 1934, the people of Mississippi disapproved, by a 3 to 1 vote on a referendum, a bill legalizing the sale of all liquors.

Missouri—License System

Administered by a Supervisor of Liquor Control, who serves at the pleasure of the Governor.

Counties and municipalities may by ordinance require licenses in addition to the state licenses, and may further regulate the traffic.

Off-sale licenses are granted to qualified proprietors of drug, cigar, delicatessen, grocery, merchandise, and confectionery stores, for the package sale of 3.2 beer, 5 per cent beer, or all liquors. The on-sale of 3.2 beer is comparatively free; 5 per cent beer or all liquors by the drink may be sold by licensed establishments with eating facilities. In cities under 20,000, however, the on-sale of beverages of over 5 per cent alcohol must

be sanctioned by popular vote. The on-sale license includes the privilege of sale by the package.

The municipality is the local-option unit. Upon petition of 20 per cent of the qualified voters, an election is held to determine whether the on-sale of beverages over 5 per cent by weight shall be allowed. Such an election may be held once every four years.

Montana—Monopoly System

Administered by the State Board of Examiners, who serve ex-officio as the Liquor Control Board. A Secretary, serving at the pleasure of the Board acts in an executive capacity. The State Board of Equalization administers a license system for 3.2 per cent beer.

Sales of all beverages of more than 3.2 per cent alcoholic content by weight are made only by the package, and only in state stores. When making a purchase, the customer must present his individual permit, obtained from the Commission.

Beer not exceeding 3.2 per cent of alcohol is freely sold by qualified individuals licensed by the Board of Equalization. County local-option elections, upon the petition of 33 1/3 per cent of the qualified voters, may be held once every two years, to decide whether 3.2 per cent beer may be sold or state stores may be located within the county limits.

Nebraska—License System

A Liquor Control Commission of three members, serving six-year overlapping terms issues all licenses.

The Commission may grant licenses for the package sale of wine and spirits throughout the state until April, 1937. At that time cities and villages may submit the question of the continuance of such licenses at the general municipal elections. No such licenses, however, may be granted for premises outside the corporate limits of a city or village except in counties in which there is no incorporated city or village.

The Commission may issue licenses for the sale of wine and spirits by the drink only in those cities and villages which have voted affirmatively for such sale in a special election called by the petition of 20 per cent of the votes cast in the last general election.

Retail licenses for the sale of beer, or all alcoholic liquors are granted to all kinds of establishments. On- and off-sales may be combined.

Applicants for on-sale licenses for beer or all alcoholic beverages must obtain the approval of the local governing board, which also has the powers of revocation. Appeals from the rulings of such local boards may be taken to the Commission.

Nevada—License System

The State Tax Commission issues all state licenses which consist of importers' liquor and beer licenses and wholesalers' liquor and beer licenses.

Applications for such licenses are filed with the County Commissioners who may approve or disapprove.

With the exception of these two classes of licensees, all control is vested in the local governing bodies, municipal and county, for the regulation of the traffic within the territory of their jurisdiction.

New Hampshire—Monopoly System

A State Liquor Commission of three, serving three-year overlapping terms, operates state stores for the sale of alcoholic beverages of more than 6 per cent by weight, and issues all licenses.

The Commission licenses manufacturers of the heavier beverages, and also hotels and clubs to sell them by the drink.

Alcoholic beverages of 6 per cent or under are manufactured and sold under licenses obtained from the Commission. Drug and grocery stores may sell them in the original packages, and hotels, restaurants, and clubs by the drink.

Local-option questions are submitted to voters in cities and towns at each biennial election. At that time the operation of state stores and the granting of on-sale licenses may be passed upon.

New Jersey—License System

Administered by a Commissioner, who serves for a seven-year term as head of the Department of Alcoholic Beverage Control. The Commissioner, elected by the legislature, issues manufacturers' and wholesalers' licenses, and also plenary railroad and boat licenses. He is empowered to make general rules and regulations and to approve the rules and regulations promulgated by local governing bodies. Local licenses are issued by the municipal governing body or, in cities over 15,000, by a municipal board of three non-salaried members appointed by the local governing body for a three-year term. In sixth-class counties the powers and duties usually conferred on municipal authorities are reposed in the judge of the court of common pleas.

The local boards grant all retail licenses except plenary retail transit licenses; they determine the number of retail outlets, fix the license fees and hours of sale within prescribed limits, and assist in the enforcement of the liquor law.

All liquors may be sold by the drink and by the package at hotels, restaurants, and taverns. Clubs may sell all liquors by the drink only. Licenses to sell all liquors, or beer only, by the package are granted to all types of retail stores. Municipalities may, by ordinance, prohibit the issuance of any or all of these classes of licenses.

A variety of municipal local-option questions are submitted at the general election upon petition of 15 per cent of the qualified voters. Such elections may be held once every three years.

New Mexico—License System

The State Board of Liquor Control is composed of three members, appointed by the Governor, who serve two-year terms.

State licenses are issued for all classes of licensees. In addition, municipal corporations and the Boards of County Commissioners may require local retail licenses from persons already licensed by the State Board and may impose further restrictions not inconsistent with the Control Act.

Off-sale licenses of various types are granted to drug, grocery, and mercantile stores. Hotels, restaurants, and clubs may procure on-sale licenses for the sale of beer, beer and wine, or liquors by the glass. A dispenser's license permits sale by the drink in one room and by the package in another room of the same building.

Before the sale of alcoholic beverages is permitted, counties, or cities over 5,000 independent of county votes, upon petition of 10 per cent of the votes cast for Governor in the last election, must take affirmative action in a popular referendum. Similar votes may be held once every four years thereafter.

New York—License System

The State Liquor Authority is composed of five members, serving five-year, overlapping terms. The board issues all licenses and regulates the entire alcoholic beverage traffic.

Local county boards of two members, one appointed by the State Board and the other by the Board of County Supervisors from submitted lists, act in an advisory capacity concerning licenses, and may restrict the hours of sale. The New York City local board is composed of four members.

Beer may be sold by the package in drug and grocery stores, and by the drink and package wherever food is served. The on-sale and off-sale of wine and spirits are kept separate. Licenses to sell wine, or wine and spirits by the package are granted only to exclusive liquor stores. Hotels, restaurants, and clubs may procure licenses to sell beer, beer and wine, or all liquors by the drink.

Bars are permitted in meal-serving establishments but must not be the "predominant" feature of the business.

Local-option provisions give cities and towns the right to hold an election not more often than once every three years upon the filing of a petition signed by 25 per cent of the number of votes cast in the last general election. The petition may ask for either of two sets of local-option questions. Group A allows voting upon whether sale of all liquors shall be allowed by the drink, by the package, or by hotelkeepers only. Group B proposes similar questions concerning the sale of wine and spirits.

North Carolina—Prohibition and County Dispensaries

Eighteen counties and the towns of Southern Pines and Pinehurst are

exempted from the prohibition statute. In seventeen of these counties, following a favorable referendum, a County Alcoholic Beverage Control Board of three members has monopoly control over the importation, transportation, and sale of alcoholic beverages within county limits. Board members are appointed by the County Commissioners, and serve four-year terms. These boards operate retail liquor stores. There is no on-sale of "intoxicating beverages."

There is no provision for a state excise tax on liquor or for a license of any description.

Beer of 5 per cent alcohol by weight may be legally sold throughout the state under a license system. The Department of Revenue regulates the manufacture, distribution, and taxation of beer; and municipal boards and Boards of County Commissioners issue retail licenses. Both county and municipal licenses are required. Many types of establishments may sell beer at retail, either by the package or by both the package and drink.

North Dakota—Prohibition

Beer of not over 3.2 per cent alcohol by weight is the only legal alcoholic beverage. The Municipal Control Act, legalizing the package sale of stronger liquors in municipal dispensaries, passed in March, 1935, was defeated at a referendum held June 24, 1936.

Light beer is manufactured and sold under a license system regulated by the State Beer Commissioner, who is appointed for a two-year term. Retail licenses are granted to qualified individuals without regard to the type of establishment.

Local governing bodies may require additional local licenses.

There are no provisions for local option.

Ohio—Monopoly System

The Department of Liquor Control is composed of the Liquor Control Commission of four members and a Director of the Department. The Commissioners serve four-year, overlapping terms, two members being appointed by the Governor biennially. The Director is also appointed by the Governor and serves at his pleasure.

Spirits and wine over 21 per cent by volume are sold by the package at state stores and agencies; private dealers are licensed to sell the lighter wines and all beers by the package.

The Department issues licenses to hotels, restaurants, clubs, and night clubs, for the on-sale of beer, beer and wine, or all liquors. Spirits and heavy wines must be purchased at wholesale by the licensees from the state stores. The number of places that may be licensed to sell spirits by the drink is limited to one for every two thousand persons. Bars are prohibited.

A set of five local-option questions covering various choices may be voted upon at a general election upon the petition of 15 per cent of the number of

votes cast for Governor in the last election. The local-option unit is a municipal corporation, residential district, or township exclusive of any municipal corporation. The result is binding for four years, except for a residential district in a "wet" municipality.

Oklahoma—Prohibition

Oklahoma is dry by Amendment to the Constitution. In 1933, the Legislature defined intoxicating beverages as containing more than 3.2 per cent alcohol by weight, and provided a license system for the manufacture and sale of beverages not over 3.2 per cent.

Licenses are issued by the State Tax Commission. On-sale licensees must also procure a local license from the county judge. Such licenses are granted only for establishments where food is served.

Oregon—Monopoly System

Administered by a Liquor Control Commission composed of three members, serving six-year, overlapping terms.

The State has a wholesale and retail monopoly on spirits, wines over 17 per cent alcohol by weight, and beers over 4 per cent by weight, which are sold only by the package in state stores and agencies upon the presentation by the customer of a purchaser's permit.

Beer, of not over 4 per cent by weight, and wine up to 17 per cent by weight are handled by private dealers licensed by the Commission. On-sale licenses for beer and wine are granted to hotels, restaurants, and clubs, and for beer alone to any establishment serving refreshments. Off-sale beer and light-wine licenses are granted to retail establishments of all types.

Counties, cities, or towns may vote, at biennial elections, upon the petition of 10 per cent of the qualified voters, to allow the sale of 4 per cent beverages, as a local-option privilege.

Pennsylvania—Monopoly System

Administered by the Liquor Control Board composed of three members, serving six-year, overlapping terms.

The Board operates retail stores which are the only outlets for the sale of wine and spirits in the original package. It also licenses hotels, restaurants, and clubs for the sale of all liquors by the drink. Wines and spirits thus sold must be purchased at wholesale from the State.

Licenses for the on-sale and off-sale of malt beverages are granted according to the provisions of the Malt Liquor Law. Such licenses are issued by the county treasurers. Off-sale licenses are granted to food stores, and on-sale licenses to establishments which serve food regularly.

Local-option elections to decide whether on-sale licenses for wine and spirits shall be granted may be held once every four years upon the petition of 10 per cent of the votes cast in the last election. The municipality or

township is the local-option unit. Similar provisions in the Beer Law permit a local-option vote upon the question of all retail beer licenses.

Rhode Island—License System

Administered by the chief of the Division of Alcoholic Beverages in the Department of Taxation. The liquor administrator is appointed by the Director of Taxation.

The State issues manufacturers, wholesalers, railroad, and boat licenses. Municipal governing bodies serve as local licensing boards to issue retail licenses, to determine the number, and to fix the fees within the limits prescribed by the law.

Wholesalers' profits are limited to 9 per cent per annum.

Off-sale licenses are granted to qualified persons without restriction as to the type of establishment. On-sale licenses for beer and wine or all liquors are granted to hotels, restaurants, clubs, and also to establishments where food is not served.

At every election in a city or town the ballot shall contain questions giving the voters an opportunity to prohibit the sale of all liquors or to prohibit only the on-sale establishments which do not have kitchen facilities.

South Carolina—License System

Administered by the State Tax Commission.

The State Constitution prohibits the sale of alcoholic beverages for consumption on the premises. The Legislature has declared beer of 5 per cent by weight and natural wines of 14 per cent by weight "to be non-alcoholic and non-intoxicating beverages." Such liquors are sold widely under licenses issued by the State Tax Commission. Stronger liquors are sold only by the package in licensed dispensaries.

South Dakota—License System

The Liquor Control Commission is composed of the State Treasurer and Attorney General, ex-officio, and an appointed Executive Officer, who serves for a six-year term.

Off-sale licenses are granted to retail stores of all types. On-sale licenses are granted to hotels, restaurants, and clubs. The two may not be combined. The number of wholesalers and on-sale retailers is limited according to population. Retail licenses must be approved by local governing bodies.

The law contains a provision allowing a municipality to operate a municipal liquor store upon a favorable vote in a referendum. If the vote is for a municipal store, only one may be operated, and no other licenses are to be granted.

Upon petition of 15 per cent of the registered voters of a town or village, a local-option vote is held at annual elections to determine whether on-sale licenses shall be granted.

Licenses for the manufacture and sale of 3.2 per cent beer are issued under the direction of the Commission. No retail licenses are granted without the approval of local governing bodies.

Tennessee—Prohibition

Legal alcoholic beverages in Tennessee are beers of not over 5 per cent alcoholic content by weight, which may be manufactured and sold under a license system. The laws governing the traffic separate the functions of taxation and licensing. The supervision and collection of the tax is under the direction of the Commissioner of Finance and Taxation.

Although the State charges a license fee, the regulation of the licensee falls upon the County Courts and the governing boards of the municipalities. Both counties and municipalities may charge fees equal to the state fees, and are empowered to pass ordinances to regulate the traffic.

Licenses to sell beer are granted to all qualified persons regardless of the type of establishment where the beer is to be sold.

Texas—License System

The Liquor Control Board is composed of three members, appointed by the Governor, who serve six-year, overlapping terms. A full-time administrator is appointed by the board with whom he serves jointly except in a few matters reserved for the board's exclusive attention.

The saloon is prohibited, and liquors of an alcoholic content greater than 14 per cent by volume may be sold only in the original package.

Package-store licenses are granted to hotels, drug stores, and to other qualified merchants. On-sale licenses for beer and wine not over 14 per cent by volume are granted to qualified persons by the Board. Holders of this license may not have a package-store license.

Licenses for the sale of beer not over 4 per cent are issued to qualified persons by the County Tax Collector following a hearing before the County judge. The Control Board is charged with the supervision of such licensees thereafter.

In addition to the state license fees, the Commissioners Court of the County and the municipal governing board of the town wherein the licensee operates may each charge a fee equal to one-half of the state fee.

Alcoholic beverages may not be sold in those counties, justice precincts, cities, or towns which at the adoption of state prohibition were dry, unless such status has been reversed or modified by a post-repeal local-option election.

Local-option elections may be held once a year, either upon the motion of the Commissioners Court of the County, or upon the petition of 10 per cent of the number of votes cast for Governor in the last preceding election. The local-option unit may be the county, justice precinct, city, or town.

Either of two types of ballots may be requested. The first is a straight vote For or Against the sale of any alcoholic beverage; by the second the voters may authorize or prohibit the sale of 4 per cent beer, or beer and wine not over 14 per cent, or all liquors.

Utah—Monopoly System

The Liquor Control Commission is composed of three members, serving six-year, overlapping terms, or at the pleasure of the Governor, at salaries to be fixed by the Governor. Its duties are to operate the state wholesale and retail monopoly on heavy beer, wines, and spirits and to license the manufacture and sale of light (3.2) beer.

Beer over 3.2 per cent, wines, and spirits may be purchased only by the package in state stores or agencies appointed and controlled by the Commission. A purchaser must possess a purchaser's permit. Beer of 3.2 per cent of alcohol is sold by private licensees.

There are no provisions for local option.

Vermont—Monopoly System

Administered by a Liquor Control Board of three members appointed by the Governor and a Liquor Administrator appointed by the Board. Members of the Board serve six-year, overlapping terms.

Spirits and heavy wines are sold by the package in state stores or controlled agencies, and by the drink in hotels, restaurants, and clubs, licensed by the Board.

The governing bodies of the municipalities are the licensing authorities for the on-sale and off-sale of beer and wine.

Local-option questions are placed on the ballots at the annual town meetings. Each town and village may vote to prohibit all licenses, or to allow the sale of beer, or beer and wine, or all liquors.

Virginia—Monopoly System

Administered by the Alcoholic Beverage Control Board, composed of three members, serving five-year, overlapping terms.

The Board has a monopoly on spirits, which are sold only by the package in state stores. All wine sold in the state must either be purchased from the Board or ordered through it. Off-sale licenses for beer, and for wine bought from the Commission and sold at prices set by the Commission are granted to retail stores without regard to the type of establishment. On-sale licenses for beer, or beer and wine, are granted to hotels, restaurants, and clubs. There is no on-sale of spirits.

Local-option provisions give a county, city, or town the right to express its wishes once every four years, upon the petition of 30 per cent of the number of votes cast for President in the last election. The questions con-

cern the sale of beer and wine over 3.2 per cent and the operation of a state store in the local-option unit.

Washington—Monopoly System

Administered by a Liquor Control Board, composed of three members appointed for 9-year, overlapping terms.

Spirits are sold only by the package in state stores. Individual purchase permits are required. Wine also is sold by the package in state stores and by licensed retailers who must buy from the monopoly. Wines produced in Washington are sold outside the monopoly. Off-sale and on-sale beer licenses are granted to all sorts of establishments.

Cities, towns, and that part of a county not included in cities and towns are the local-option units. Upon the petition of 30 per cent of the votes cast at the last election, such a unit has the right at each general election to prohibit or allow the sale of alcoholic beverages.

West Virginia—Monopoly System

Administered by a Liquor Control Commission composed of three members, serving four-year, overlapping terms.

Alcoholic beverages containing over 5 per cent of alcohol may be purchased only by the package at state stores or at agencies whose managers are salaried and controlled by the Commission. Sale by the drink, excepting beer up to 5 per cent is prohibited.

The manufacture and sale of alcoholic beverages of not over 5 per cent is regulated by a license system under the administration of the State Tax Commissioner. All types of establishments may obtain retail licenses.

Local-option elections may be held once every two years in a county or municipality upon the petition of 25 per cent of the qualified voters. The only question which may be voted upon at such a special election is whether a state store may be operated within the local-option district.

Wisconsin—License System

The State Treasurer is the licensing authority for manufacturers and wholesalers, while local governing bodies license retailers and set the fees within prescribed limits.

Licenses for off- or on-sale beer, or of all alcoholic beverages are granted to qualified persons, without restriction as to the type of establishment. The two privileges may not be combined, however. Municipalities may operate package stores following a favorable vote by the inhabitants.

Residential sections may become "no-license" districts upon the petition of a majority of the electors. Local-option privileges are granted to municipalities at the yearly town election upon the petition of 15 per cent of the votes cast for Governor at the last election. At such an election, the

question is whether licenses shall be granted for the sale of intoxicating beverages. The sale of beer is not affected.

Wyoming—Wholesale Monopoly

Administered by a Liquor Commission, composed of the Governor, Secretary of State, and State Treasurer. The Commission operates a wholesale monopoly on wines and spirits, and licenses manufacturers and beer wholesalers. Local governing boards have complete control over retailers.

A plenary retail license is granted exclusively to barrooms, that it, establishments that deal in nothing other than intoxicating liquor. Such liquor establishments, however, may be conjoined with restaurants or hotel dining rooms, never coterminous with them. Beer and wine licenses may be granted to establishments that deal in merchandise other than liquor.

There are no provisions for local option.

District of Columbia—License System

Administered by a Board of three members appointed by the District Commissioners. The Board members serve four-year, overlapping terms.

Off-sale licenses for beer and wine, or all liquors, are granted liberally. Hotels, restaurants, and clubs are licensed to sell beer and wine or all liquors by the glass. On- and off-sales may not be combined.

There is no provision for local option.

Appendix V

REVENUE FROM ALCOHOLIC BEVERAGES, LICENSE STATES, 1935

(Cents omitted—this accounts for certain disparities in additions and subtractions.)

State	Total Revenue	Excise Tax on Spirituous Liquor	Per Cent of Total	Excise Tax on Wine	Per Cent of Total	Excise Tax on Beer	Per Cent of Total	Revenue from Licenses of All Kinds	Per Cent of Total
Arizona	$ 428,312[1]	$ 181,746	42.4	$ 35,065	8.2	$ 86,563	20.2	$ 124,937	29.2
Arkansas	886,545[2]	445,551	50.3	9,310	1.0	140,737	15.9	290,945	32.8
California	12,365,307	4,119,780	33.3	431,960	3.4	1,267,294	10.2	6,546,271	53.0
Colorado	2,029,634	—		—		—		163,423	8.0
Connecticut	3,015,741	— [3]		— [3]		— [3]		1,453,710	48.2
Delaware	435,936[4]	215,095[5]	49.3	9,634[5]	2.2	81,335[5]	18.7	129,935[6]	29.8
Florida	1,904,203	784,202	41.2	—	—	636,898[7]	33.4	483,102	25.4
Illinois	8,543,417	4,221,215	49.4	311,485	3.6	2,542,758	29.8	1,467,959	17.2
Indiana	5,674,506[8]	1,902,467	33.5	50,955	0.9	1,039,837[9]	18.3	2,681,246	47.3
Kentucky	3,663,297[10]	2,465,337[11]	67.3	—	—	668,617[10]	18.3	519,343[10]	14.4
Louisiana	—								
Maryland	1,655,610	1,509,451	91.2	41,447	2.5	—	—	104,710	6.3
Massachusetts	7,214,045[12]	1,792,044	24.9	116,064	1.6	1,626,031	22.5	3,679,905[13]	51.0
Minnesota	3,411,084[14]	1,582,397[15]	46.4	—	—	1,723,014	50.5	105,672[14]	3.1
Missouri	4,713,770	2,823,986[16]	59.9	—	—	684,657	14.5	1,205,126	25.6
Nebraska	896,852[17]	435,483	48.5	22,370	2.5	271,555	30.3	167,442	18.7
Nevada	143,041[14]	— [3]	—	— [3]	—	— [3]	—	11,576[14]	8.1
New Jersey	11,252,531	3,831,418[18]	34.0	217,846	1.9	2,291,914	20.4	4,911,352	43.7
New Mexico	613,857	— [3]	—	— [3]	—	— [3]	—	261,143[19]	42.5

New York.......	38,163,563	11,316,586[20]	29.7	794,020	2.1	7,435,038	19.4	18,617,918	48.8
Rhode Island.....	1,544,924	350,695[21]	22.7	—	—	352,562[22]	22.8	841,665	54.5
South Carolina...	1,338,636	714,097	53.3	—	—	461,671[23]	34.5	162,868	12.2
South Dakota....	—								
Texas...........	—								
Wisconsin........	4,834,745[14]	2,698,499	55.8	63,852	1.3	1,906,546	39.4	165,898[14,24]	3.5
(States having state-wide sale of beer only)									
Georgia.........	244,971	—	—	—	—	183,793	75.0	61,177	25.0
North Carolina...	495,907	—	—	—	—	452,864	91.3	43,043	8.7
North Dakota....	619,345	—	—	—	—	457,581	73.9	161,763	26.1
Tennessee........	—								

1 Excise tax for six months only.
2 For period: March 22–Dec. 31.
3 Not available.
4 This figure represents the total gross revenue after subtraction of $16,174 for refunds.
5 Refunds have not been subtracted.
6 Refunds have been subtracted.
7 Includes revenue from wine.
8 For period: March 1, 1935–Feb. 29, 1936.
9 Includes taxes on malt and wort in the sum of $42,459.08.
10 For period: July 1, 1934–June 30, 1935. From compilation made by Distilled Spirits Institute.
11 For period: July 1, 1934–June 30, 1935. From compilation made by Distilled Spirits Institute. Includes whisky withdrawal tax in the sum of $277,368 and an ad valorem tax in the sum of $90,270.
12 License fees for period Dec. 1, 1934–Nov. 30, 1935; taxes = assessments for calendar year. Includes local fees in the approximate amount of $3,000,000.
13 This includes an approximate figure of $3,000,000 for local licenses.
14 Does not include income from local retail licenses.
15 Includes revenue from wine.
16 Includes revenue from all wine.
17 License fees for period June 1, 1935–Dec. 1, 1935.
18 Includes $6,945.45 in taxes on alcohol.
19 Includes $225,117 in municipal fees.
20 Includes taxes on cider in the sum of $563.54.
21 Includes excise-tax collections and service charges on imported spirituous and vinous beverages.
22 Excise taxes and service charges combined.
23 Includes revenue from wine under 14 per cent.
24 Includes $2,817 in miscellaneous income.

Appendix VI

EXPENSES OF ADMINISTRATION AND REVENUES FROM ALCOHOLIC BEVERAGES WITH AMOUNTS PER 100,000 OF POPULATION, LICENSE STATES, 1935

(Cents omitted—this accounts for certain disparities in additions and subtractions.)

State	Population (1930 Census)	Expenses of Administration	Cost of Administration per 100,000 Population	Revenue from Excise Taxes	Excise Revenue per 100,000 Population	Revenue from Licenses	License Revenue per 100,000 Population
Arizona	435,573	$ 59,270[1]	$13,609	$ 606,750[2]	$139,322	$ 124,937	$ 28,688
Arkansas[3]	1,854,482	48,669	2,624	595,600	32,118	290,945	15,689
California	5,677,251	1,585,261	27,923	5,819,035	102,498	6,546,271	115,308
Colorado	1,035,791	93,387	9,016	1,866,210	180,188	163,423[4]	15,778
Connecticut	1,606,903	102,172[5]	6,358	1,562,030	97,207	1,453,710[6]	90,466
Delaware	238,380	83,565[7]	35,067	306,000[8]	128,409	129,935[9]	54,525
Florida	1,468,211	80,755[10]	550	1,421,101	96,792	483,102	32,904
Illinois	7,630,654	454,367[11]	5,954	7,075,458	92,724	1,467,959	19,237
Indiana	3,238,503	132,734[12]	4,098	2,993,259[13]	92,427	2,681,246[14]	82,792
Kentucky	2,614,589	120,000[15]	4,589	3,133,954[16]	119,868	529,343[16]	20,246
Louisiana	2,101,593	—[17]	—	—[17]	—	—[17]	—
Maryland	1,631,526	78,414[18]	4,806	1,550,899[19]	95,059	104,710[19]	6,531
Massachusetts[20]	4,249,614	125,694	2,957	3,534,140	83,164	3,679,905[21]	86,594
Minnesota	2,563,953	124,144	4,841	3,305,412	128,921	105,672[22]	4,121
Missouri	3,629,367	140,609	3,874	3,508,644	96,675	1,205,126	33,205
Nebraska[10]	1,377,963	87,167	6,326	729,409	52,936	167,442	12,151
Nevada	91,058	5,396	5,929	131,465	144,467	11,576[22]	12,720
New Jersey	4,041,334	558,927[23]	13,830	6,341,179	156,909	4,911,352	121,529
New Mexico	423,317	20,823	4,919	352,713	83,324	261,143	61,692

New York	12,588,066	1,042,245[24]	8,279	19,545,645	155,272	18,617,918[25]	147,902
Rhode Island[26]	687,497	101,540	14,771	703,258	102,306	841,665[27]	122,441
South Carolina[28]	1,738,765	26,555	1,527	1,175,768	67,623	162,868	9,367
South Dakota	692,849	—[17]	—	—[17]	—	—[17]	—
Texas	5,824,715	—[17]	—	—[17]	—	—[17]	—
Wisconsin	2,939,006	330,548	11,246	4,834,798	164,504	163,081[22]	5,548
(States having state-wide sale of beer only)							
Georgia[29]	2,908,506	7,500	257	183,793	6,319	61,177	2,103
North Carolina	3,170,276	—	—	452,864	—	43,043	—
North Dakota	680,845	57,697	8,474	457,581	67,212	161,763	23,760
Tennessee	2,616,556	—[17]	—	—[17]	—	—[17]	—

1 Includes cost of collecting excise estimated for 12 months. The cost of collecting excise for six months ($12,135) was doubled; as was also the figure for total tax collections ($303,375) for the same period.
2 Estimated for 12 mos.
3 For period: March 22–Dec. 31.
4 Does not include receipts of municipalities for local licenses.
5 For Tax Department $30,000; for Liquor Control Department $72,172.
6 For period: July 1–Dec. 31.
7 Includes $1,786 on stock-purchased account treated as an expenditure.
8 Refunds deducted. All figures for Delaware are for period Dec. 1, 1934–Dec. 1, 1935.
9 This includes miscellaneous income in the amount of $3,062. Refunds deducted.
10 For period: June 1–Dec. 31.
11 Includes $176,424.24 for administrative expenses other than cost of collecting excise. Data obtained from Distilled Spirits Institute's compilation.
12 Estimated expense for calendar year 1935. Actual figures furnished by excise administrators are $376,082.05 for period March 1, 1933–Dec. 31, 1935.
13 For period: March 1, 1935–Feb. 29, 1936.
14 For period: March 1, 1935–Feb. 29, 1936. Includes miscellaneous receipts, such as fines, etc., in the sum of $5,751.90.
15 Estimated by State Tax Commission.
16 For period: July 1, 1934–June 30, 1935, from compilation by Distilled Spirits Institute.
17 Data not available.
18 For year: Oct. 1, 1934–Sept. 30, 1935.
19 Calendar year.
20 For year: Dec. 1, 1934–Nov. 30, 1935.
21 Includes $3,000,000 for local licenses.
22 Does not include revenue from local licenses.
23 Expense of administering A. B. C. department: $343,012.36; expense of collecting excise taxes: $215,915.39.
24 S L A's expenses: $510,763; appropriations to county boards: $445,052.44; expense of collecting excise: $86,429.88.
25 Includes income from such miscellaneous sources as bond revocations, interest, etc., in the sum of $93,294.60.
26 For year: Dec. 1, 1934–Nov. 30, 1935.
27 Miscellaneous receipts included.
28 May 14–Dec. 31.
29 Sale of wine produced in Georgia permitted, but no excise tax imposed nor license fee required.

Appendix

UNIFORM FINANCIAL REPORT FOR MONOPOLY STATES SHOWING STORE PROFITS, AND FROM BEER, WINE AND LIQUOR

(cents

	Idaho May 1– Dec. 31 1935	Iowa Cal. year 1935	Maine Dec. 22, 1934 Dec. 21, 1935	Michigan Cal. year 1935	Montana Cal. year 1935	New Hampshire Cal. year 1935
Income and Expenses of the State Stores System						
1. Revenue from sales.....	2,095,953	6,090,734	3,491,472	22,956,046	4,704,318	2,837,128
2. Less: Cost of Goods....	1,504,012	4,194,835	2,445,641	17,272,002	3,075,798	2,031,938
3. Gross profits from sales..	591,940	1,895,899	1,045,830	5,684,044	1,628,520	805,189
4. Less: Expenses of administration & operation..	253,537	851,809	351,605	2,098,620	604,755	251,035
5. Net operating income...	338,403	1,044,089	694,225	3,585,423	1,023,765	554,154
6. Other income..........	74,918[a]	180,502[a]	39,638	44,685	110,621[a]	38,358[d]
7. Net profit............	413,322	1,224,592	733,863	3,630,108	1,134,386	592,512
Revenue from Excise Taxes and Equivalent Imposts						
8. Tax on liquor sold by state................						
9. Tax on wine...........				151,215		
10. Tax on beer...........	212,476	1,004,211	302,317	4,093,406[c]	241,445	342,114[e]
11. Total excise taxes and imposts.............	212,476	1,004,211	302,317	4,244,622	241,445	342,114
Revenue from License Fees and Permits, Except Individual Purchase Permits						
12. Fees for manufacture and sale & misc. permissions	17,586	75,717[b]	223,320	2,336,405	277,270	Incl. in lines 6 & 10
13. Total revenue from taxes & fees—lines 11 & 12..	230,062	1,079,928	525,637	6,581,027	518,715	342,114
14. Less: cost of collecting taxes & fees.........	9,000	10,925	53,201	Incl. in line 4	14,700	48,035
15. Net revenue from taxes and fees............	221,062	1,069,003	472,436	6,581,027	504,015	294,079
Total Net Revenue—lines 7 and 15........	634,385	2,293,596	1,206,300	10,211,135	1,638,402	886,591

[a] Incl. fees from sale of individual purchase permits.
[b] Does not incl. fees collected by municipalities for 4,931 package retail-beer licenses.
[c] Includes inspection fee on beer shipped from other states.
[d] Incl. certain license fees.
[e] Incl. fees for certain permits to sell beer.
[f] Incl. the sum of $4,311,869.83 paid to State Treas. by the Dept. of Liquor Control as a mandatory
[g] Incl. a deduction from income to cover revaluation of inventory amounting to $42,187.71.
[h] Fees paid to State Treas. $4,009,851.07; fees treated as misc. income of state stores, $63,283.99.
[i] Estimated by State Tax Commission.
[j] Incl. floor tax of $3,360,447.26 on spirits held in a warehouse at time of repeal; tax paid by dis-
[k] Incl. $678,651.16 fees for applications & transfers ordinarily shown in profit and loss statement of for Fayette, Lackawanna, Lancaster, Northumberland and Washington counties.
[l] Beer taxes as for year ended June 30, 1935.
[m] Beer licenses ($35,360) are for year ended June 30, 1935.
[n] Sales tax $0.10 per pint effective May 1, 1935.
[o] Does not incl. local beer- and wine-license fees collected by towns.
[p] Incl. tax on wine.
[q] Incl. $101,638 estimated fees collected by local authorities in 1935.
[r] Estimated cost of administering beer tax law.

VII

CONSOLIDATED RETURN ON REVENUES DERIVED FROM STATE- TAXES AND LICENSE FEES FOR THE YEAR 1935

omitted)

OHIO Jan. 1–Dec. 28 1935	OREGON Cal. year 1935	PENNSYLVANIA Cal. year 1935	UTAH June 1–Dec. 31 1935	VERMONT Cal. year 1935 2nd half est.	VIRGINIA Cal. year 1935	WASHINGTON Cal. year 1935	WEST VIRGINIA May 9–Dec. 31 1935	WYOMING Apr. 1–Dec. 31 1935
32,431,417	6,113,774	55,909,591	1,826,837	1,460,353	12,803,572	11,166,487	4,950,079	1,329,153
25,220,783[f]	4,532,203	43,408,468	1,383,177	1,066,058	8,502,819	8,741,603	3,290,471	1,122,894
7,210,633	1,581,570	12,501,122	443,660	394,295	4,300,752	2,424,884	1,659,608	206,259
2,806,135[g]	556,779	5,154,090	294,022	105,145	1,121,766	952,534	538,306	70,823
4,404,497	1,024,790	7,347,031	149,637	289,150	3,178,986	1,472,349	1,121,301	135,435
241,995	154,760[a]	428,172	97,529[a]	11,682	225,829	376,309[a]	100,799	17,201
4,646,493	1,179,551	7,775,203	247,167	300,832	3,404,815	1,848,658	1,222,101	152,637
4,311,869[f]		3,384,745[j]		170,032[n]		745,588[s]		201,299
539,418	95,975	427				6,233		4,172
6,250,236	446,817	6,348,466	142,961[l]	99,563[p]	889,750	696,718	417,160	321,146
11,101,525	542,792	9,733,638	142,961	269,596	889,750	1,448,540	417,160	237,618
4,073,135[h]	169,266	7,695,287[k]	38,724[m]	42,920[o]	218,209[q]	359,363	340,747	10,283
15,174,660	712,059	17,428,926	181,685	312,516	1,107,959	1,807,903	757,907	247,902
301,000[i]	Incl. in line 4		3,268	Incl. in line 4	15,000[r]	244,764	7,500[r]	Incl. in line 4
14,873,660	712,059	17,428,926	178,416	312,516	1,092,959	1,563,139	750,407	247,902
19,520,153	1,891,611	25,204,130	462,510	613,349	4,497,774	3,411,798	1,972,509	400,539

profit, usually referred to as a tax.

tillers when sales at prices to include the tax are made to the monopoly.
the state-store system. Local beer license fees amount to $1,623,557.49 including an estimate of $188,646

Appendix VIII

REVENUES, EXPENSES, AND PROFITS OF STATE LIQUOR-STORE SYSTEMS IN 1935, EXCLUSIVE OF REVENUE FROM EXCISE TAXES, OCCUPATIONAL LICENSES, AND MISCELLANEOUS FEES

(cents omitted)

State	Receipts from Sales and Other Income	Cost of Goods		Operating Expenses		Net Profits	
		Amount	Per Cent of Income	Amount	Per Cent of Income	Amount	Per Cent of Income
Idaho[1]	2,170,871	1,504,012	69.3	253,537	11.7	413,322	19.0
Iowa	6,271,237	4,194,835	66.9	851,809	13.6	1,224,592	19.5
Maine	3,531,110	2,445,641	69.3	351,605	9.9	733,863	20.8
Michigan	23,000,731	17,272,002	75.1	2,098,620	9.1	3,630,108	15.8
Montana	4,814,940	3,075,798	63.8	604,755	12.6	1,134,386	23.6
New Hampshire	2,875,486	2,031,938	70.7	251,035	8.7	592,512	20.6
Ohio	32,673,412	20,908,913	64.0	2,806,135	8.6	8,958,363[5]	27.4
Oregon	6,268,534	4,532,203	72.3	556,779	8.9	1,179,551	18.8
Pennsylvania	56,337,763	43,408,468	77.1	5,154,090	9.1	7,775,203	13.8
Utah[2]	1,924,367	1,383,177	71.9	294,022	15.3	247,167	12.8
Vermont	1,472,036	1,066,058	72.4	105,145	7.2	300,832	20.4
Virginia	13,029,401	8,502,819	65.3	1,121,766	8.6	3,404,815	26.1
Washington	11,542,796	8,741,603	75.7	952,534	8.3	1,848,658	16.0
West Virginia[3]	5,050,879	3,290,471	65.2	538,306	10.6	1,222,101	24.2
Wyoming[4]	1,346,355	1,122,894	83.4	70,823	5.3	152,637	11.3

[1] Idaho stores in operation from May 1 to Dec. 31.
[2] Utah stores in operation from June 1 to Dec. 31.
[3] West Virginia stores in operation from May 9 to Dec. 31.
[4] Wyoming—wholesale monopoly in operation from Apr. 1 to Dec. 31.
[5] Includes the sum of $4,311,869.83 paid to the State Treasurer in the form of a mandatory profit sometimes called a tax.

Appendix IX

ADMINISTRATIVE AND OPERATING EXPENSES IN MONOPOLY STATES, INCLUDING BEER-LAW ADMINISTRATION AND REVENUES FROM ALL ALCOHOLIC BEVERAGES FOR THE YEAR 1935

	Population (1930 census)	Expenses of administration and operation	Cost of administration & operation per capita	Net profits from state stores & net revenue from taxes & license fees	Net profits taxes & fees per capita
States Operating Stores for a Full Year:					
Iowa	2,470,939	862,734	.35	2,293,596	.93
Maine	797,423	404,806	.51	1,206,300	1.51
Michigan	4,842,325	2,098,620	.43	10,211,135	2.11
Montana	537,606	619,455	1.15	1,638,402	3.05
New Hampshire	465,293	299,071	.64	886,591	1.91
Ohio	6,646,697	3,107,135	.47	19,520,153	2.94
Oregon	953,786	556,779	.58	1,891,611	1.98
Pennsylvania	9,631,350	5,154,090	.53	25,204,130	2.62
Vermont	359,611	105,145	.29	613,349[2]	1.71
Virginia	2,421,851	1,136,766	.47	4,497,774[3]	1.86
Washington	1,563,396	1,197,299	.77	3,411,798	2.18
States Operating Stores for Less Than a Year:					
Idaho	445,032	262,537[1]	.59	634,385	1.43
Utah	507,847	297,291	.58	425,584	.84
West Virginia	1,729,205	545,806	.32	1,972,509	1.14
Wyoming	225,565	70,823	.31	400,539	1.78

[1] Includes 9,000 estimated cost of beer-tax administration.
[2] Does not include local license fees on sale of beer and wine.
[3] Includes local license fees estimated at $101,638 for 1935.

Appendix X

NET REVENUES FROM ALCOHOLIC BEVERAGES IN MONOPOLY STATES FOR THE YEAR 1935

(cents omitted)

State	Total Net Revenue	Net Profits from State-Store System	Per Cent of Total	Net Revenue from taxes, licenses & fees incl. beer taxes & licenses	Per Cent of Total
Idaho	634,385	413,322	65.2	221,062	34.8
Iowa	2,293,596	1,224,592	53.4	1,069,003	46.6
Maine	1,206,300	733,863	60.8	472,436	39.2
Michigan	10,211,135	3,630,108	35.6	6,581,027	64.4
Montana	1,638,402	1,134,386	69.2	504,015	30.8
New Hampshire	886,591	592,512	66.8	294,079	33.2
Ohio	19,520,153	4,646,493	23.8	14,873,660	76.2
Oregon	1,891,611	1,179,551	62.4	712,059	37.6
Pennsylvania[1]	25,204,130	7,775,203	30.8	17,428,926	69.2
Utah	425,584	247,167	58.1	178,416	41.9
Vermont	613,349	300,832	49.0	312,516	51.0
Virginia	4,497,774	3,404,815	75.7	1,092,959	24.3
Washington	3,411,798	1,848,658	54.2	1,563,139	45.8
West Virginia	1,972,509	1,222,101	62.0	750,407	38.0
Wyoming	400,539	152,637	38.1	247,902	61.9

[1] The cost of collecting excise taxes was not obtainable; the tax-revenue figure represents the gross collection of taxes. It is not likely that the cost of tax collection would alter the percentages by more than 1 per cent.

Appendix XI

REVENUES FROM LICENSES AND TAXES IN MONOPOLY STATES, 1935

(cents omitted)

State	Tax on Spirits	Tax on Wine	Tax on Beer	License and Permit Fees Covering All Alcoholic Beverages Manufactured and Sold in State
Idaho	—	—	212,476	17,586
Iowa	—	—	1,004,211	75,717[7]
Maine	—	—	302,317[2]	223,320
Michigan	—	151,215	4,093,406	2,336,405
Montana	—	—	241,445	277,270
New Hampshire	—	—	342,114[3]	25,452
Ohio	4,311,869	539,418	6,250,236	4,073,135
Oregon	—	95,975	446,817	169,266
Pennsylvania	3,384,745	427	6,348,466	7,695,287[4]
Utah	—	—	142,961	38,724
Vermont	170,032[1]	—	99,563[6]	42,920[5]
Virginia	—	—	889,750	218,209
Washington	745,588[1]	6,233	696,718	359,363
West Virginia	—	—	417,160	340,747
Wyoming	201,299	4,172	32,146	10,283

[1] Sales tax on goods sold in state stores; wine sales included.

[2] Includes delinquent stamp receipts and misc. receipts.

[3] Includes fees for certain permits to sell beer.

[4] License fees and charges amounted to $6,071,730. Most of this was turned over to local governments. Fees for applications and transfers amounting to $678,651 were retained by the monopoly and added to the profits; beer license fees collected by county treasurers amounted to $1,623,557 including estimate of $188,646 for Fayette, Lackawanna, Lancaster, Northumberland, and Washington counties.

[5] Does not include beer and wine off-sale license fees collected by towns.

[6] Includes taxes on wine.

[7] Does not include local fees for sale of beer.

Appendix XII

PROFIT AND LOSS STATEMENTS OF STATE MONOPOLIES, 1935

IDAHO LIQUOR CONTROL COMMISSION

CONSOLIDATED STATEMENT OF PROFIT & LOSS, INCOME & EXPENSE

Year Ending December 31, 1935

INCOME

Sales		
Liquor Sales	$2,095,953.35	
Less cost of sales	1,504,012.38	591,940.97
Warehouse inventory adjustment		5,772.34 N[1]
Total gross profit on sales		$597,713.31
Selling Expense		
Stores and distribution	$168,338.39	
Warehouse	15,039.72	
Warehouse stock gain	176.90 N[2]	
Store stock loss	584.85	
Breakage	137.50	
Cash short	247.34	
Liquor mark down account	183.55	
Total		184,354.45
Net profit on sales		$412,756.96
General and Administrative Expense		
Central office	$53,602.78	
Overhead — supervisory & auditing expense	15,403.15	
Total		$69,005.93
Other Operating Revenue		
Permit sales — regular	$37,116.00	
Permit sales — special	34.50	
Miscellaneous income — stores	123.74	
Miscellaneous income — purchasing dept.	157.25	
Total		37,431.49
Net operating profit		$381,784.42
Other Non-operating Income		
Discounts earned	$28,044.80	
Handling charge on returned merchandise	3,146.12	
Bond interest earned	346.94	
Total		31,537.86
Net profit for 8-month period		$413,322.28

NOTES: N[1] Difference between standard cost and invoice cost.
N[2] Deduction on selling expense.

STATE OF IOWA
LIQUOR CONTROL COMMISSION
STATEMENT OF INCOME AND EXPENSE—BY DEPARTMENTS

For the Period March 8, 1934 to June 30, 1935

	Amount: Detail	Amount: Totals
Sales		
Retail Liquor Sales		$5,345,961.26
Deduct: Sales Refunds and Price Mark-downs		7,389.87
Net Liquor Sales		$5,338,571.39
Cost of Liquor Sold		
Cost of Liquor Sales		3,605,278.85
Gross Profit on Liquor Sales		$1,733,292.54
Stores Operating Expense		425,135.88
Net Operating Profit—Stores		$1,308,156.66
Central Office and Warehouse Expense		
Commissioners' Staff	$ 53,837.93	
Accounting	64,875.69	
Warehouse	39,065.38	
Legal Department	4,186.74	
General	70,914.94	232,880.68
Net Operating Profit		$1,075,275.98
Other Income		
Permit Income	$123,536.50	
Deduct: Permit Expenses	16,849.57	106,686.93
Purchase Discounts and Miscellaneous Income		16,749.85
Total Other Income		$ 123,436.78
		$1,198,712.76
Other Deductions		
Enforcement Expense	$ 47,433.58	
Deduct: Miscellaneous Income	956.61	46,476.97
Loss on Disposition of Fixed Assets		362.49
Organization Expense Written off		32,498.55
Total Other Deductions		$ 79,338.01
Net Income		$1,119,374.75

MAINE STATE LIQUOR COMMISSION
CONSOLIDATED PROFIT AND LOSS STATEMENT

For the Period from December 22, 1934, to December 21, 1935

		Amount
SALES		$3,491,472.12
LESS COST OF GOODS SOLD:		
Purchases	$3,043,774.24	
Less Returns and Allowances	18,104.37	
Net Purchases	3,025,669.87	
Less Stock Losses	180.75	
Total	3,025,489.12	
Deduct Inventory Dec. 21, 1935	579,847.40	
COST OF GOODS SOLD		2,445,641.72
GROSS PROFIT ON SALES		1,045,830.40
LESS DIRECT STORE OPERATING EXPENSE		225,823.91
NET PROFIT ON SALES		820,006.49
ADD—MISCELLANEOUS STORE INCOME		163.20
TOTAL STORE PROFIT		820,169.69
DEDUCT—DEPARTMENTAL EXPENSES		125,781.24
NET STORE OPERATING PROFIT		694,388.45
ADD—LICENSE AND MISCELLANEOUS INCOME:		
Hotels	$20,400.00	
Restaurants	400.00	
Clubs	3,000.00	
Railroads	600.00	
Manufacturers' Licenses	50.00	
Steamship License	200.00	
Misc. Refunds and Income	3,497.34	
Claims Against Vendors	1,557.86	
Discount on Purchases	33,207.25	
TOTAL OTHER INCOME		62,912.45
TOTAL PROFIT		757,300.90
ADD—PURCHASE RET. & ALLOWANCE SUSPENSE		833.31
GROSS SURPLUS		758,134.21
ADD—SURPLUS ADJUSTMENT		379.48
NET SURPLUS		$ 758,513.69

MICHIGAN LIQUOR CONTROL COMMISSION

Statement of Profit and Loss and Revenues and Expenses

For the Nine-Month Period from July 1, 1935 to March 31, 1936

GROSS SALES		$20,997,494.02
DISCOUNTS ALLOWED		1,829,370.56
NET SALES		19,168,123.46
COST OF SALES		14,768,860.11
GROSS PROFIT		4,399,263.35
WINE STORE REVENUE		15,788.10
TOTAL GROSS PROFIT		$4,415,051.45
DIRECT EXPENSES		
Salaries & Wages	$582,383.52	
Postage	65.97	
Express, Cartage, Trucking	132,727.87	
Office & Other Supplies	19,179.56	
Rent	88,466.69	
Heat, Light & Power	21,720.65	
Traveling Expenses	5,076.01	
Telephone & Telegraph	4,201.95	
Insurance	38,625.00	
Depreciation	24,933.15	
Repairs, Improvements	20,143.15	
Miscellaneous	44,210.76	
Cash — Over & Short	(1,695.23)	
Revenue from Stamping Liquor	(456.21)	
	$979,582.84	
Overhead (Branches and Lansing Office)	1,174,871.57	
Net Profit—Stores	$3,240,179.88	
REVENUES		
Beer Tax Stamps & Alcohol Tax	$3,141,537.96	
Licenses	147,785.84	
Fines	14,922.75	
Miscellaneous	26,956.94	
TOTAL REVENUES	$3,331,203.49	
EXPENSES		
Executive	$19,969.21	
Collection	51,029.78	
Application & Licensing	102,059.52	
Enforcement	110,936.46	
TOTAL EXPENSES	$283,994.97	

STATE OF MONTANA
LIQUOR CONTROL BOARD
STATEMENT OF PROFIT AND LOSS

For the Year Ended December 31, 1935

Net Sales of Liquors	$4,704,318.86
Less: Cost of Liquors Sold	3,075,798.64
GROSS PROFITS ON LIQUORS SOLD	$1,628,520.22
Add: Permits Sold	63,560.50
TOTAL GROSS PROFITS	$1,692,080.72
Stores Operating Expenses:	
Salaries and Labor	$ 289,615.93
Rents Paid	30,687.98
Lights, Fuel and Water	5,536.45
Telephone and Telegraph	1,051.00
General Supplies	8,439.85
Postage	3,814.69
Repairs and Depreciation	8,354.42
Breakage and Shortage	915.08
TOTAL STORES OPERATING EXPENSES	$ 348,415.40
TOTAL STORES OPERATING PROFITS	$1,343,665.32
Central Office, Warehouse and Distribution Expenses:	
Salaries and Wages	$ 79,530.92
Rents Paid	3,538.20
Lights, Fuel and Water	1,117.72
Telephone and Telegraph	764.23
General and Office Supplies	16,385.05
Postage	1,317.37
Freight and Drayage	86,431.18
Travel Expenses	15,860.57
Fire and Industrial Insurance	13,319.08
Repairs and Depreciation	4,325.15
Breakage and Shortage	803.53
Law Enforcement Salary and Expense	29,282.66
Interest Paid	....
Taxes and Licenses	3,664.01
Total Central Office and warehouse expenses	$ 256,339.67
NET OPERATING PROFITS	$1,087,325.65
Add: Discounts Earned	47,060.91
NET PROFIT FOR THE PERIOD	$1,134,386.56

NEW HAMPSHIRE STATE LIQUOR COMMISSION
FINANCIAL STATEMENT

January 1, 1935 to December 31, 1935

SALES			
State Liquor Stores	$2,716,597.46		
Licensees	120,531.12		
GROSS SALES		$2,837,128.58	
COST OF GOODS SOLD			
Purchase of Liquor, and Trucking		2,031,938.98	
GROSS PROFIT ON SALES		$805,189.60	
OPERATING EXPENSES			
Administration, Warehousing, Enforcement, Stores Operations		251,035.27	
NET INCOME FROM OPERATIONS		$554,154.33	
ADDITIONAL INCOME			
(Discounts and License Fees)		38,358.41	$592,512.74
BEER TAX, 1935			
Fees on permits and Beer Sales		342,114.95	
Administration Expense		48,035.93	
NET PROFIT FOR YEAR 1935			$294,079.02
TOTAL NET PROFIT FROM LIQUOR AND BEER			$886,591.76

STATE OF OHIO
DEPARTMENT OF LIQUOR CONTROL
STATEMENT OF PROFIT AND LOSS

December 28, 1935

Net Profit — Stores	$4,522,734.93
Net Profit — Agencies	910,498.64
Net Profit — Warehouses	122,377.20
Totals	$5,555,610.77
Operating Expenses	
Administrative	$ 360,722.50
Board Members	40,861.83
Stores Supervision	95,868.96
Purchasing	16,381.37
Permit	53,094.28
Enforcement	497,136.32
Insurance — Stock in Warehouses	4,702.99
Renewal Storage Charges	19,275.88
Transfer Movement Expenses	19,298.54
Inspecting, Stamping and Recooperage at Warehouse	1,582.99
Total Operating Expenses	$1,108,925.66
Net Operating Profit	$4,446,685.11
Miscellaneous Income	
Purchase Discounts	$ 238,701.82
Fee for Consent to Move Private Stocks	27,448.99
Fee for Consent to Move Alcohol	200.00
Transfer Fees — Permits	35,635.00
Sundry Income	3,294.04
Total Miscellaneous Income	$ 305,279.85
	$4,751,964.96
Deduction from Income	
Revaluation of Liquor Inventory	42,187.71
Net Profit	$4,709,777.25

OREGON LIQUOR CONTROL COMMISSION

Consolidated Statement of Income and Expenses—All Divisions

For the Year Ended December 31, 1935

INCOME	
Liquor sales — stores (less discounts)	$3,653,502.42
Liquor sales — agencies (less discounts)	2,387,779.69
Liquor sales — warehouse	72,491.91
License fees	168,687.50
Privilege taxes	542,792.76
Permit sales	100,440.00
Duplicate permit sales	908.50
Bottling plant — gross gain on departmental sales	13,710.80
Bottling plant — sale of empty containers	964.52
Discounts earned	37,512.80
Importation fees	578.90
Miscellaneous income — license and privilege tax division	1,224.35
Total income	$6,980,594.15
COST AND EXPENSES	
Cost of sales	
Liquor cost — stores	$2,651,377.66
Liquor cost — agencies	1,729,024.87
Liquor cost — warehouse	69,221.41
Freight cost — stores	43,790.21
Freight cost — agencies	38,789.32
Total cost of sales	$4,532,203.47
Salaries	
Stores	$ 162,273.87
Agencies	114,745.21
Warehouse	28,332.90
Bottling plant	6,683.25
Administrative — stores division	57,473.47
License division	14,608.66
Privilege tax division	11,839.73
Total salaries	$ 395,957.09
All other expenses	
Stores	$ 48,424.84
Agencies	7,052.37
Warehouse	13,021.02
Bottling plant	3,045.43
Administrative — stores division	67,723.45
License division	8,198.24
Privilege tax division	5,166.08
Miscellaneous expenses — stores division — net	8,191.14
Total all other expenses	$ 160,822.57

COMMONWEALTH OF PENNSYLVANIA
LIQUOR CONTROL BOARD
SUMMARY STATEMENT OF PROFIT AND LOSS

January 1 to December 31, 1935

Sales		$55,909,591.11
Less: Cost of Sales		
Costed into Stores		$43,296,617.14
Federal Tax Paid Not Costed		-0-
Reserve for Contested Federal Tax		127,569.26
		$43,424,186.40
Discounts on Special Sales Merchandise		15,717.70
Cost of Sales		$43,408,468.70
Gross Profit from Sales		$12,501,122.41
Less: Operating Expenses		
Store Operating Expense		$ 2,767,625.72
Warehouse Operating Expense		716,698.58
Total Operating Expense		$ 3,484,324.30
Gross Operating Profit		$ 9,016,798.11
Less: Administrative Expense		
Board and Secretary's Offices	$	51,704.86
Legal		27,301.67
Publicity		-0-
Real Estate and Building Inspection		32,784.32
Headquarters Building Expense		21,554.06
General Administrative		93,854.54
Field Auditing and Inspection		75,593.35
Accounting and Financial Control		287,190.13
Purchasing		74,181.62
Merchandising and Distribution		32,934.77
District Offices		82,733.30
Licensing		92,062.44
Enforcement		346,174.89
Examination Expense		13,305.04
Reserve for Auditing Expense		42,000.00
Reserve for Fire Loss		60,000.00
Reserve for Inventory Loss		300,000.00
Reserve for Federal License Tax		36,391.68
Total Administrative Expense		$ 1,669,766.67
Net Operating Profit		$ 7,347,031.44

Add: Other Income		
Interest on Bank Deposits		28,880.24
Miscellaneous Income		34,910.46
Discount on Purchases		364,381.64
Total Miscellaneous Income	$	428,172.34
Net Profit from Stores	$	7,775,203.78
Add: Income from Other Sources		
Liquor License Application Fees		678,651.16
Net Profit	$	8,453,854.94

Utah Liquor Control Commission

CONSOLIDATED STATEMENT OF PROFIT & LOSS, INCOME, & EXPENSE

For Period June 1, 1935 – December 31, 1935

INCOME		
Sales of Liquor	1,822,978.96	
Cost of Liquor Sold	1,379,789.97	
Gross Earnings from Liquor Sold		443,188.99
Sales of Alcohol	3,858.45	
Cost of Alcohol Sold	3,387.12	
Gross Earnings from Alcohol Sold		471.33
Permits Sold	37,026.05	
Special Permits Sold	56.50	
Public Service Licenses Sold	180.00	
Total Permits Sold		37,262.55
Miscellaneous Sales		80.56
Gross Profit All Sales		481,003.43
Storage Earned	15,791.91	
Handling Charges Earned	9,771.84	
Display Case Rentals	10,968.50	
Total		36,532.25
Gross Profit on Operations		517,535.68
EXPENSES		
Cost of Permits Sold	1,782.57	
Loss From Breakage	278.64	
Cash Short	136.15	
Freight, Express, & Drayage In	937.93	
Freight, Express & Drayage Out	28,746.66	
Salaries & Wages	162,879.50	
Professional Fees & Salaries	8,115.85	
Building Alterations & Repairs	4,555.55	
Lights & Power	2,350.54	
Travel Expense	4,835.32	
Printing & Forms	8,506.83	
Store Supplies	6,562.37	
Rents & Leases	10,144.17	
Interest Paid	2,183.34	
Bonds & Insurance Premiums	7,564.67	
Depreciation — Office	678.49	
— Stores	2,430.25	
— Warehouse	220.75	
Inventory Adjustment	26.28	
Office Supplies	5,311.43	
Postage	2,079.67	
Janitorial Supplies	525.22	

Telephone & Telegraph	1,372.35	
Bottle Labels	1,186.52	
Miscellaneous Expense	310.32	
Federal Taxes	1,243.69	
Enforcement	28,532.59	
Heat	286.44	
Machine Rentals	238.69	
Total Expenses		294,022.78
Net Operating Revenue		223,512.90
OTHER INCOME		
Cash over	389.37	
Interest Earned	673.69	
Discounts Earned	22,591.56	
Total Other Income		23,654.62
NET PROFIT ON OPERATIONS		247,167.52

STATE OF VERMONT LIQUOR CONTROL BOARD

STATEMENT OF OPERATIONS FOR THE PERIOD JUNE 1, 1934 TO JUNE 30, 1935

SALES:			
Retail	1,370,547.26		
Wholesale	209,669.65		
	1,580,216.91		
Less: State Tax	25,432.30		
NET SALES			1,554,784.61
COST OF SALES			1,135,092.59
GROSS PROFIT			419,692.02
STORES OPERATING EXPENSES:			
Salaries and Wages	39,502.11		
Rents	11,805.00		
Supplies and Miscellaneous Expenses	8,280.66		
Insurance	3,130.89		
Federal Taxes	345.92		
Breakage and Shortage	818.75		
Depreciation on Fixtures	3,702.30	67,585.63	
WAREHOUSE EXPENSES:			
Salaries and Wages	4,535.53		
Supplies and Miscellaneous Expenses	1,438.61		
Insurance	1,058.99		
Federal Taxes	135.43		
Breakage	24.15		
Depreciation	2,358.70	9,551.41	
ADMINISTRATIVE & GENERAL EXPENSES:			
Salaries			
Administrator	3,728.43		
Board Members	3,851.00		
Inspectors and Secretary	4,684.38		
Accounting and Clerical	9,181.19		

Travel:			
Administrator............	795.43		
Board Members..........	1,744.37		
Inspectors and Auditor....	4,703.75		
Supplies and Miscellaneous Expenses..................	3,650.43		
Depreciation on Office Furniture and Fixtures.............	1,690.58	34,029.56	
TOTAL EXPENSES			111,166.60
NET OPERATING PROFIT.........			308,525.42
OTHER INCOME:			
From Alcohol Sales...........	704.37		
Discounts Earned.............	11,404.85		12,109.22
NET PROFIT FOR PERIOD			320,634.64

COMMONWEALTH OF VIRGINIA
ALCOHOLIC BEVERAGE CONTROL BOARD
STATEMENT OF PROFIT AND LOSS

For the Period July 1, 1934 through June 30, 1935

REVENUE:	
Net sales	$12,461,041.99
Licenses issued for manufacture and sale of liquors	130,010.50
Whiskey transportation permits	763.25
Percentage on direct wine and rum shipments	64,442.67
Penalties in lieu of license suspensions	4,387.50
Miscellaneous revenue	4,366.72
Cash and quantity discounts	164,273.80
Profit on operations of Salvage Department	415.98
Total revenue	$12,829,702.41
COSTS AND EXPENSES:	
Cost of goods sold	$ 8,368,350.44
Retail store expenses	504,674.80
Warehouse expenses	202,988.12
Total direct selling expenses	707,662.92
Retail store overhead and supervisory expenses	61,877.56
General office overhead	204,688.43
Inspection and enforcement expenses	106,399.99
Total administrative and general expenses	$ 372,965.98
Total costs and expenses	$ 9,448,979.34
NET PROFITS	$ 3,380,723.07

WASHINGTON STATE LIQUOR CONTROL BOARD

PROFIT & LOSS STATEMENT—TWELVE MONTHS ENDING DECEMBER 31, 1935

MERCHANDISE DIVISION	SALES	COST OF SALES	GROSS PROFIT	NET PROFIT
REVENUES				
Store Liquor	9,335,791.25	7,309,751.20	2,026,040.05	
Agency Liquor	1,771,793.94	1,386,735.29	385,058.65	
Direct Liquor	58,902.22	45,116.70	13,785.52	
TOTALS	11,166,487.41	8,741,603.19	2,424,884.22	
Store Permits	198,002.50			
Agency Permits	45,990.50			
TOTAL	243,993.00			
Less Reserve for Unearned Portion	26,000.00			
NET PERMIT SALES			217,993.00	
Gross Profit on Bottling			36,378.56	
Cash Discount			113,222.65	
Miscellaneous Income			8,715.18	
GROSS			2,801,193.61	
EXPENSE			952,534.95	
NET PROFIT MERCHANDISE DIVISION				1,848,658.66
LICENSING DIVISION				
REVENUES				
License Fees			984,980.52	
Reserve for Unearned Portion, 9/30/35		59,000.00		
Reserve for Unearned Portion, 12/31/35		556,617.14	625,617.14	
NET LICENSE FEES			359,363.38	
Beer Tax			696,718.32	
Wine Tax			6,233.75	
GROSS			1,062,315.45	
EXPENSE			244,764.17	
NET PROFIT LICENSING DIVISION				817,551.28
TOTAL NET PROFIT				2,666,209.94
10% SALES TAX — MAY TO DECEMBER INCLUSIVE				745,588.53
TOTAL DISTRIBUTIONS				
To General fund of State		1,220,000.00		
To Counties and cities		980,000.00		
Total		2,200,000.00		
GRAND TOTAL				3,411,798.47

Appendix XIII

FEDERAL LIQUOR TAXES AND TARIFF RATES

(as of July, 1936)

Domestic Beverages

Classification	Rate
Distilled spirits, per proof gallon or per wine gallon where below proof...	$2.00
Still wine:	
14 per cent alcohol by volume and under, per wine gallon............	.05
More than 14 and less than 21 per cent alcohol by volume, per wine gallon..	.10
More than 21 and less than 24 per cent alcohol by volume, per wine gallon..	.20
More than 24 per cent alcohol by volume, per wine gallon............	2.00
Champagne, artificially carbonated wines, and liqueurs:	
Containing less than 24 per cent alcohol by volume:	
Champagne and sparkling wine, per ½ pint.....................	.025
Artificially carbonated wine, per ½ pint........................	.0125
Liqueurs and cordials, per ½ pint.............................	.0125
Containing more than 24 per cent alcohol:	
Champagne and sparkling wine, per wine gallon..................	2.00
Artificially carbonated wine, per wine gallon....................	2.00
Liqueurs and cordials, per wine gallon.........................	2.00
Grape brandy and wine spirits used in the fortification of wine, per proof gallon..	.10
Malt liquors, per barrel..	5.00

Foreign Beverages

Classification	Rates		
	Customs Duty	Internal Revenue Tax	Total
Distilled spirits, per proof gallon or per wine gallon where below proof	$5.00[1]	$2.00	$7.00
Still wines:			
14 per cent alcohol by volume and under, per wine gallon	1.25[2]	.05	1.30
More than 14 per cent and less than 21 per cent alcohol by volume, per wine gallon	1.25	.10	1.35
More than 21 and less than 24 per cent alcohol by volume, per wine gallon	1.25	.20	1.45
More than 24 per cent alcohol by volume, per wine gallon	5.00	2.00	7.00
Champagne and other sparkling wine:			
Containing 24 per cent alcohol by volume and under, per gallon	6.00[3]	.40	6.40
Containing more than 24 per cent alcohol by volume, per gallon	6.00[3]	2.00	8.00
Ale, porter, stout, and beer: per gallon	1.00	0.16	1.16

[1] Under the terms of various trade agreements with foreign countries the customs duty on rum, bonded whisky, gin, cordials, and brandies from certain countries has been reduced to $2.50 per gallon.

[2] Under a trade agreement with France effective June 15, 1936, the tariff on still wines, other than vermouth, was reduced to $0.75, and on vermouth to $0.625 per gallon.

[3] Under the trade agreement between France and the United States, the tariff on champagne was reduced to $3.00 per gallon.

Appendix XIV

STATE LIQUOR TAXES

(as of July 15, 1936)

Spirits

Alabama	not legal.
Arizona	$ .05 per 8 oz. ($ .80 per gal.)
Arkansas	$ .40 per gal; in addition, a tax of $ .05 per proof gal.
California	proof strength or less, $ .80 per gal.; in excess of proof strength, $1.60 per gal.
Colorado	$ .20 per pint ($1.60 per gal.)
Connecticut	4 per cent of the gross receipts from retail sales; 1 per cent of the gross receipts from wholesale sales.
Delaware	25 per cent or less by volume, $ .75 per gal.; more than 25 per cent by volume, $1.00 per gal.
Florida	$ .80 per gal.
Georgia	not legal.
Idaho	no tax.
Illinois	$ .50 per gal.
Indiana	not more than 15 per cent by volume, $ .25 per gal. (diluted spirits considered in the nature of wine); over 15 per cent by volume, $1.00 per gal.
Iowa	no tax.
Kansas	not legal.
Kentucky	$1.04 per gal. (additional tax of $ .05 per gal. by blenders and rectifiers on imported spirits)
Louisiana	$ .60 per gal.
Maine	no tax.
Maryland	$1.10 per gal.; in addition, a tax of $ .05 per gal.
Massachusetts	24 per cent or less by volume, $ .15 per gal.; more than 24 per cent but not more than 50 per cent by volume, $ .40 per gal.; more than 50 per cent by volume, $ .40 per proof gal.
Michigan	no tax.
Minnesota	$ .60 per gal.
Mississippi	not legal.
Missouri	$ .80 per gal.
Montana	no tax.
Nebraska	$ .50 per gal.
Nevada	$ .10 per quart ($ .40 per gal.)
New Hampshire	no tax.
New Jersey	$1.00 per gal.
New Mexico	24 proof and under, $ .24 per gal.; over 24 but not over 60 proof, $ .40 per gal.; over 60 but not over 100 proof, $ .80 per gal.; over 100 but not over 150 proof, $1.20 per gal.; over 150 proof, $1.60 per gal.
New York	less than 24 per cent by volume, $ .50 per gal.; 24 per cent and over by volume, $1.00 per gal.
North Carolina	no tax.
North Dokata	not legal.

Ohio	mandatory profit of \$1.00 per gal.; bottled cocktails at 10 per cent of retail selling price.
Oklahoma	not legal.
Oregon	no tax.
Pennsylvania	no tax on liquor sold by the state monopoly except on goods subject to the 1933 floor-tax of \$2.00 per gal.; on goods sold outside the state, importer's tax, \$1.00 per gal. on distilled spirits; \$1.30 per gal. on rectified spirits.
Rhode Island	liquors, \$ .50 per gal.; brandy, \$ .70 per gal.; beverage alcohol, \$1.00 per gal.
South Carolina	\$ .80 per gal. (\$ .05 per 8 oz.)
South Dakota	\$ .50 per gal.
Tennessee	not legal.
Texas	\$ .80 per gal.
Utah	no tax.
Vermont	sales tax of \$ .10 per pint (\$ .80 per gal.)
Virginia	no tax.
Washington	10 per cent of retail selling price.
West Virginia	no tax.
Wisconsin	less than 21 per cent by volume, \$ .25 per gal.; 21 per cent or more by volume, \$1.00 per gal.
Wyoming	\$ .10 per pint (\$ .80 per gal.)
D. C.	\$ .50 per gal. (alcohol, \$1.10)

Wine

Alabama	not legal.
Arizona	not over 24 per cent by volume, \$ .03 per 16 oz.; over 24 per cent by volume, \$ .05 per 8 oz.
Arkansas	imported, \$ .10 per gal.; domestic, \$ .05 per gal.
California	still, \$ .02 per gal.; sparkling, \$ .03 per pint.
Colorado	14 per cent or less by volume, \$ .03 per quart; more than 14 per cent by volume, \$ .06 per quart.
Connecticut	4 per cent of the gross receipts from retail sales, 1 per cent of the gross receipts from wholesale sales.
Delaware	\$ .40 per gal.
Florida	still, \$ .10 per gal.; sparkling, \$ .50 per gal.
Georgia	no tax.
Idaho	no tax.
Illinois	14 per cent or less by volume, \$ .10 per gal.; more than 14 per cent by volume, \$ .25 per gal.
Indiana	21 per cent or less by volume, \$ .25 per gal.; over 21 per cent by volume, \$1.00 per gal.
Iowa	no tax.
Kansas	not legal.
Kentucky	\$ .25 per gal.
Louisiana	not over 14 per cent by volume, \$ .05 per gal.; over 14 per cent by volume, not in excess of 24 per cent, \$ .10 per gal.; in excess of 24 per cent, \$ .60 per gal.; sparkling, \$ .60 per gal.
Maine	domestic, tax free; wine made from foreign raw materials, \$ .04 per gal. on liquid raw materials; \$ .02 per lb. on solid raw materials.

Maryland	$ .20 per gal.
Massachusetts	$ .10 per gal. (including vermouth)
Michigan	profit and inspection fee, domestic, $ .30 per gal.; foreign, $ .30 per gal.; manufactured in Michigan, $ .15 per gal.
Minnesota	up to 14 per cent by weight, $ .10 per gal.; 14 per cent and over up to 21 per cent by weight, $ .20 per gal.; 21 per cent and over up to 24 per cent by weight, $ .40 per gal.; more than 24 per cent by weight, $ .60 per gal.; naturally sparkling, $ .60 per gal.; artificially sparkling, $ .30 per gal.
Mississippi	not legal.
Missouri	14 per cent by weight and under, $ .02 per gal.; over 14 per cent by weight, $ .10 per gal.
Montana	no tax.
Nebraska	14 per cent by volume or under, $ .05 per gal.; more than 14 per cent by volume, $ .15 per gal.
Nevada	more than 8 per cent and not over 14 per cent by weight, $ .025 per quart; more than 14 per cent and not over 22 per cent by weight, $ .05 per quart; over 22 per cent by weight, $ .10 per quart.
New Hampshire	no tax.
New Jersey	not over 21 per cent by volume, $ .10 per gal.; over 21 per cent, $ .25 per gal.; sparkling, $ .40 per gal.
New Mexico	21 per cent by volume and under, $ .01 per pint; over 21 per cent by volume, $ .02 per pint; sparkling and imported, $ .03 per pint.
New York	still, $ .10 per gal.; naturally sparkling, $ .40 per gal.; artificially sparkling, $ .20 per gal.
North Carolina	no tax.
North Dakota	not legal.
Ohio	10 per cent of retail selling price.
Oklahoma	not legal.
Oregon	naturally fermented, $ .125 per gal.; fortified, $ .30 per gal.; bottled (naturally fermented) 10 per cent of invoice price; bottled (fortified) 15 per cent of invoice price; sparkling wine, 15 per cent of invoice price.
Pennsylvania	no tax on wine sold through monopoly; tax on wine sold outside the state, importers, $ .005 per unit of proof per wine gal.
Rhode Island	still, $ .05 per gal.; sparkling, $ .25 per gal.
South Carolina	not more than 14 per cent by weight, $ .15 per gal.; in excess of 14 per cent by weight and not in excess of 21 per cent by volume, $ .32 per gal. ($ .02 per 8 oz.)
South Dakota	not more than 14 per cent by weight, $ .10 per gal.; more than 14 per cent by weight and up to 21 per cent by weight, $ .20 per gal.; from 21 per cent to 24 per cent by weight, $ .40 per gal.; more than 24 per cent by weight, $ .50 per gal.; sparkling, $ .50 per gal.
Tennessee	not legal.
Texas	14 per cent and under by volume, $ .02 per gal.; more than 14 per cent and not over 24 per cent by volume, $ .05 per gal.; over 24 per cent by volume, $ .50 per gal.; sparkling, $ .25 per gal.

Utah	no tax.
Vermont	$ .05 per gal.
Virginia	no tax.
Washington	$ .10 per gal.
West Virginia	no tax.
Wisconsin	14 per cent or less by volume, $ .05 per gal.; more than 14 per cent and not more than 21 per cent by volume, $ .10 per gal.
Wyoming	$ .03 per pint.
D. C.	under 14 per cent no tax; over 14 per cent by volume, $ .10 per gal.; sparkling, $ .15 per gal.

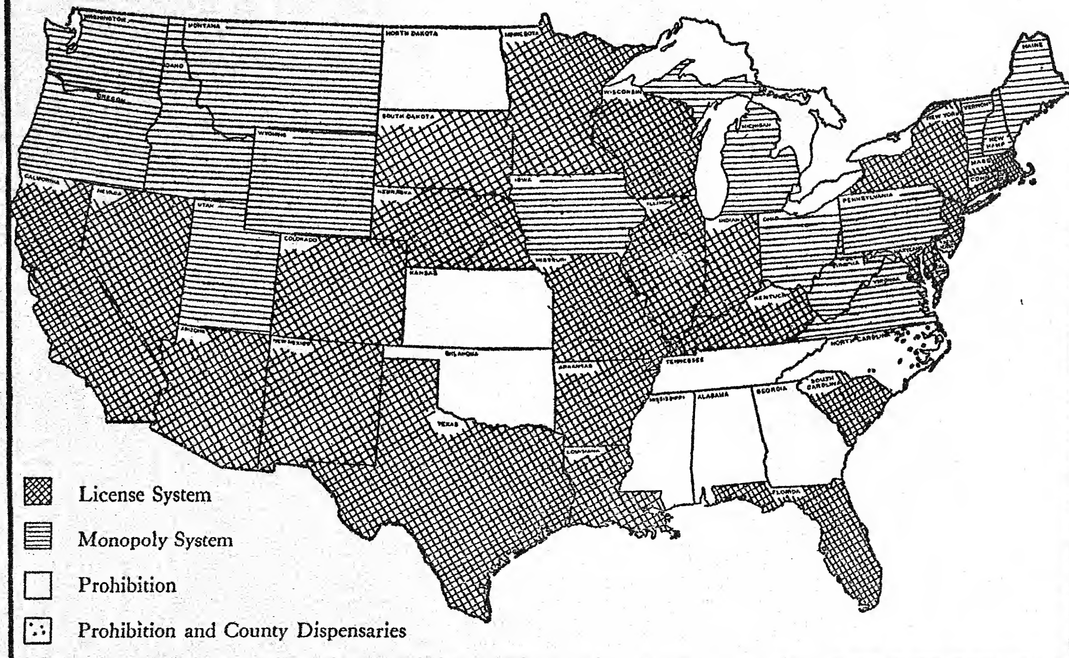
Beer

Alabama	not legal
Arizona	$ .05 per gal. ($1.55 per bbl.[1])
Arkansas	5 per cent by weight and under, $1.00 per 32 gals.; over 5 per cent by weight, $ .03 per gal. ($ .96 per bbl. of 32 gals.)
California	$ .62 per bbl.
Colorado	$ .03 per gal. ($ .93 per bbl.)
Connecticut	4 per cent of the gross receipts from retail business, 1 per cent of the gross receipts from wholesale business.
Delaware	$1.00 per bbl.
Florida	$ .06 per gal. ($1.86 per bbl.)
Georgia	$1.25 per bbl.
Idaho	$1.55 per bbl.
Illinois	$ .02 per gal. ($ .62 per bbl.)
Indiana	$ .03⅓ per gal. ($1.03 per bbl.); (liquid malt, $ .05 per gal.; malt syrup, $ .05 per lb.)
Iowa	$1.24 per bbl.
Kansas	not legal.
Kentucky	$1.50 per bbl.
Louisiana	6 per cent by volume and under, $1.00 per bbl.; imported, $1.50; more than 6 per cent by volume, $1.50 per bbl.
Maine	$1.24 per bbl.
Maryland	$ .02 7/16 per gal. ($ .75 per bbl.)
Massachusetts	$1.00 per bbl.
Michigan	$1.25 per bbl. (in addition, $ .25 inspection fee on out of state beer)
Minnesota	not more than 3.2 per cent by weight, $1.00 per bbl.; over 3.2 per cent by weight, $2.00 per bbl.
Mississippi	$ .05 per gal. ($1.55 per bbl.)
Missouri	$ .62 per bbl.
Montana	$1.00 per bbl.
Nebraska	$ .03 per gal. ($1.00 per bbl.)
Nevada	$ .02 per gal. ($ .62 per bbl.)
New Hampshire	$3.00 per bbl.
New Jersey	$1.00 per bbl.
New Mexico	less than 6 per cent by volume, $1.00 per bbl.; over 6 per cent by volume, $1.50 per bbl.

[1] A barrel contains 31 gallons except where otherwise indicated.

New York	\$1.00 per bbl.
North Carolina	\$3.00 per bbl.
North Dakota	\$ .08 per gal. (\$2.48 per bbl.)
Ohio	3.2 per cent by weight and under, \$1.50 per bbl.; over 3.2 per cent by weight, \$2.50 per bbl.
Oklahoma	\$2.50 per bbl.
Oregon	\$1.30 per bbl. (\$ .03⅓ per lb. of malt syrup)
Pennsylvania	\$1.24 per bbl.
Rhode Island	\$1.00 per bbl.
South Carolina	not in excess of 5 per cent by weight, \$ .15 per gal. (\$4.65 per bbl.)
South Dakota	not more than 3.2 per cent by weight, \$1.00 per bbl.; more than 3.2 per cent by weight, \$1.25 per bbl.
Tennessee	\$1.20 per bbl.
Texas	not more than 4 per cent by weight, \$1.24 per bbl.; in excess of 4 per cent by weight, \$ .15 per gal. (\$4.65 per bbl.)
Utah	not more than 3.2 per cent by weight, \$ .80 per bbl.; more than 3.2 per cent by weight, \$1.60 per bbl.
Vermont	\$ .05 per gal. (\$1.55 per bbl.)
Virginia	\$2.75 per bbl.
Washington	\$1.00 per bbl.
West Virginia	\$1.00 per bbl.
Wisconsin	\$1.00 per bbl.
Wyoming	\$ .02 per gal. (\$ .62 per bbl.)
D. C.	no tax.

Map Showing Type of Liquor Control System in Each State of the United States—1936



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